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Title 2. Administration

Complete Title

Vol. 2

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BARCLAYS OFFICIAL CALIFORNIA CODE OF REGULATIONS

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TITLE 2. ADMINISTRATION

NOMENCLATURE CROSS–REFERENCE

(NOTE: Effective April 1, 1990, the Office of Administrative Law authorized the renaming of the hierarchical headings used within the Titles of the *California Code of Regulations*. Until the agencies implement these changes in their regulations, use the following Cross–Reference Table for the new organizational headings used in this Title.)

OLD HIERARCHY	REVISED HIERARCHY
Chapter	Division
Subchapter	Chapter
Group	Group
Subgroup	Subgroup
Article	Article
Section	Section

Title 2. Administration

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Title 2. Administration

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TITLE 2. ADMINISTRATION

Division 1. Administrative Personnel

Chapter 1. State Personnel Board

Subchapter 1. General Civil Service Regulations

(Originally Printed 3-22-45)

PREFATORY NOTE

Articles 1 through 25, inclusive, are promulgated under the authority of Section 18701, Government Code, unless otherwise noted.

Article 1. Definitions

For the statutory definitions, refer to Section 18520 of the Act and sections following.

§ 1. Definitions.

Unless the context requires otherwise, the definitions hereinafter set forth govern the construction of these regulations.

HISTORY

1. Chapter 1 originally published 3-22-45 (Title 2).
2. Revision of chapter 1 filed 4-11-47; effective 5-11-47 (Register 7).
3. Repealer of NOTE filed 4-8-77; effective thirtieth day thereafter (Register 77, No. 15).
4. Change without regulatory effect amending subchapter heading and section filed 9-16-92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 39).

§ 2. Act.

"Act" means the State Civil Service Act and Part 1 of Division 5 of Title 2 of the Government Code of the State of California.

§ 3. Agency.

"Agency" includes "department," "board," "office," "authority," "commission," and every other governmental unit.

§ 3.5. Appointing Power.

"Appointing Power" means a person or group defined by statute as having authority to make appointments to positions in the state civil service. This in no way affects the delegation of authority, as defined in Section 7 of the Government Code.

HISTORY

1. New section filed 11-1-72; effective thirtieth day thereafter (Register 72, No. 45).

§ 4. Board.

"Board" means the State Personnel Board of the State of California.

§ 5. Employee.

"Employee" includes every officer and employee subject to the act or these regulations.

HISTORY

1. Change without regulatory effect amending section filed 9-16-92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 39).

§ 6. Executive Officer.

"Executive Officer" means the executive officer of the board.

§ 6.1. Use of Month or Calendar Month.

NOTE: Authority cited: Section 18701, Government Code. Reference: Section 18538.1, Government Code.

HISTORY

1. Amendment filed 11-7-69; effective thirtieth day thereafter (Register 69, No. 45). For prior history, see Register 68, No. 49.
2. Amendment of NOTE filed 4-8-77; effective thirtieth day thereafter (Register 77, No. 15).
3. Repealer filed 8-28-85; effective thirtieth day thereafter (Register 85, No. 35).

§ 6.2. Qualifying Monthly Pay Period.

NOTE: Authority cited: Section 18701, Government Code. Reference: Sections 18538.1 and 19533.04, Government Code.

HISTORY

1. Amendment of NOTE filed 4-8-77; effective thirtieth day thereafter (Register 77, No. 15). For prior history, see Register 69, No. 45.
2. Amendment filed 11-15-78; effective thirtieth day thereafter (Register 78, No. 45).
3. Amendment filed 10-3-80; effective thirtieth day thereafter (Register 80, No. 40).
4. Repealer filed 8-28-85; effective thirtieth day thereafter (Register 85, No. 35).

§ 6.3. Qualifying Monthly Pay Period for Hourly and Daily Rate Employees.

NOTE: Authority cited: Section 18701, Government Code. Reference: Sections 18538.1, 19530 and 19533.04, Government Code.

HISTORY

1. New section filed 10-3-80; effective thirtieth day thereafter (Register 80, No. 40).
2. Repealer filed 8-28-85; effective thirtieth day thereafter (Register 85, No. 35).

§ 6.4. Break in Service.

For the purposes of the act and these regulations, an employee shall be deemed to have a break in the continuity of his or her state civil service due to a permanent separation only if:

(a) the employee permanently separates from state service as defined by Section 446 and

(b) then remains outside state service for at least eleven consecutive working days.

NOTE: Authority cited: Section 18701, Government Code. Reference: Sections 19996.1 and 19998.3, Government Code.

HISTORY

1. New section filed 8-28-85; effective thirtieth day thereafter (Register 85, No. 35).
2. Change without regulatory effect amending section and NOTE filed 9-16-92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 39).

§ 7. Regulations.

"Regulations" means the regulations of the board.

HISTORY

1. Change without regulatory effect amending section filed 9-16-92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 39).

§ 8. Good Faith Appointment Requirements and Sanctions for Violation.

To be valid, a civil service appointment must be made and accepted in "good faith" under the civil service statutes and board regulations. For purposes of administering the civil service statutes, including Government Code Sections 19257 and 19257.5 and board Regulations, "good faith" is presumed to exist in the following circumstances:

(a) In order to make an appointment in "good faith," an appointing power and all officers or employees to whom an appointing power delegates appointment authority must:

(1) Intend to observe the spirit and intent of the law; and

(2) Make a reasonable and serious attempt to determine how the law should be applied; and

(3) Assure that positions are properly classified; and

(4) Assure that appointees have appropriate civil service appointment eligibility; and

(5) Intend to employ the appointee in the class, tenure and location to which appointed under the conditions reflected by the appointment document; and

(6) Make a reasonable and serious attempt to provide the relevant reference materials, training, and supervision necessary to avoid any mistakes of law or fact to the persons responsible for the pertinent personnel transactions; and

(7) Act in a manner that does not improperly diminish the rights and privileges of other persons affected by the appointment, including other eligibles.

Any officer or employee who violates any of the foregoing provisions of this regulation, or any other officer or employee in a position of authority who directs any officer or employee to violate any of these provisions, shall be subject to civil or criminal sanctions as provided in Government Code Sections 19680, 19681, 19682, 19683, 19764, as well as adverse action as provided in Government Code Sections 19572, 19583.5, or 19682.

(b) In order to accept an appointment in "good faith," an employee must:

(1) Intend to serve in the class to which the employee is being appointed under the tenure, location and other elements of the appointment as reflected by the appointment document; and

(2) Provide the appointing power with complete, factual, and truthful information necessary for a proper appointment; and

(3) Make a reasonable attempt to seek correction of any aspects of the appointment that the employee knows are illegal.

Violation of any of the foregoing provisions of this section by an employee shall be cause for adverse action.

If a lack of good faith exists on the part of either the appointing power or the employee, the executive officer may cancel the improper appointment without regard to the one-year limitation set forth in Government Code Section 19257.5 subject to the provisions of Section 266.

NOTE: Authority cited: Section 18701, Government Code. Reference: Sections 19257, 19257.5, 19572, 19583.5, 19680, 19681, 19682 and 19683, Government Code.

HISTORY

1. New section filed 1-21-80 as procedural and organizational; effective upon filing (Register 80, No. 4).
2. Amendment filed 1-18-82; effective thirtieth day thereafter (Register 82, No. 4).
3. Change without regulatory effect amending opening paragraph, subsections (a)(7) and (b)(3) filed 9-16-92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 39).

§ 9. Compensation.

The word "compensation" as used in Government Code Section 19257 includes salary, vacation, sick leave, health benefits, retirement benefits, salary step advancement and State service credit for determining vacation earning rates and eligibility for a salary above the minimum rate when legally appointed to the class, Industrial Disability Leave, Nonindustrial Disability Insurance benefits and red circle rates. "Compensation" also includes the continuity of service when used to determine the employee's eligibility for these compensation items.

"Compensation" as used in Government Code Section 19257 does not include tenure in a position, seniority credits, permissive reinstatement, eligibility, mandatory reinstatement rights, eligibility to take promotional examinations, career credits, permanent or probationary status and service toward completion of the probationary period; nor continuity of service when used to determine the employee's right to or eligibility for any of the foregoing.

NOTE: Authority cited: Section 18701, Government Code. Reference: Section 19257, Government Code.

HISTORY

1. New section filed 1-18-82; effective thirtieth day thereafter (Register 82, No. 4).

§ 10. Disability.

(a) "Individual with a disability" means, with respect to an individual (1) having a physical or mental impairment that substantially limits one or more major life activities of such individual; (2) having a record of such impairment; or (3) being regarded as having such an impairment.

(b) "Physical Impairment" means any physiological disorder, or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin and endocrine.

(c) "Mental impairment" means any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(d) "Major life activities" means activities that an average person can perform with little or no difficulty, such as: walking, speaking, breathing, performing manual tasks, seeing, hearing, learning, caring for oneself, working, sitting, standing, lifting, or reaching, etc.

(e) "Substantially limits" means the individual with a disability is: 1) unable to perform a major life activity that the average person in the general population can perform; or 2) significantly restricted as to the condition, manner or duration under which the average person in the general population can perform that same major life activity.

NOTE: Authority cited: Sections 18701, 19231, 19241 and 19792, Government Code. Reference: Sections 19230, 19231 and 19240-44, Government Code; and Federal Public Health and Welfare Code, Title 42, Chapter 126, Sections 12101-12117 (Americans with Disabilities Act of 1990 [ADA]).

HISTORY

1. New section filed 10-20-94; operative 11-21-94 (Register 94, No. 42).

Article 2. General Provisions

For the General Provisions of the State Civil Service Act, refer to Section 18570 of the act and sections following.

§ 21. Citation of Regulations.

Each section of these regulations is a regulation of the board and may be cited as such. Thus, this section, whether appearing in the California Code of Regulations or elsewhere, may be cited as "Section 21" or "2 CCR 21."

HISTORY

1. Change without regulatory effect amending section heading and text filed 9-16-92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 39).

§ 22. Effect of Headings.

Article and section headings contained herein shall not be deemed to govern, limit, modify or in any manner affect the scope, meaning, or intent of the provisions of any article or section hereof.

§ 23. Continuing Provisions.

The provisions of these regulations, insofar as they are substantially the same as regulations of the board superseded hereby and relating to the same subject matter, shall be construed as restatements and continuations and not as new enactments. Rights, privileges, and remedies accrued under any regulations superseded by these regulations are continued in full force and effect unless abolished by some contrary provision herein.

HISTORY

1. Change without regulatory effect amending section filed 9-16-92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 39).

§ 24. Reports.

In order that the work of the board may be expedited, the appointing power of every state agency shall file with the board such reports as the board or the executive officer may require. Reports shall be submitted on such forms and filed at such times as may be prescribed by the board or the executive officer.

Article 3. Administration

For the general statutory provisions on this subject, refer to Section 18650 of the act and sections following.

§ 31. Regular Meetings.

The time and place of each regular meeting of the board shall be fixed by the board not less than one month preceding the date of the meeting.

NOTE: Reference: Sections 18652 and 18653, Government Code.

HISTORY

1. Amendment filed 3–9–59; effective thirtieth day thereafter (Register 59, No. 5).
2. Amendment of NOTE filed 4–8–77; effective thirtieth day thereafter (Register 77, No. 15).

§ 32. Special Meetings.

NOTE: Authority cited: Section 18701, Government Code. Reference: Section 11125, Government Code.

HISTORY

1. Amendment filed 10–26–79; effective thirtieth day thereafter (Register 79, No. 43).
2. Repealer 12–31–85; effective thirtieth day thereafter (Register 86, No. 1).

§ 33. Emergency Meetings.

Emergency meetings of the board shall be called by the president of the board at any time and place within the State of California upon the request of not less than three members of the board.

NOTE: Authority cited: Section 18701, Government Code. Reference: Sections 11125.5 and 18653, Government Code

HISTORY

1. Amendment filed 12–31–85; effective thirtieth day thereafter (Register 86, No. 1).

§ 34. Calendar.

(a) All matters to be presented for consideration by the board at a regular meeting shall be placed upon the board's calendar without undue delay. The calendar agenda shall be distributed to every party who has requested a copy at least ten days prior to such regular meeting.

(b) The non–hearing calendar is defined as agenda items submitted by either the board staff or the Department of Personnel Administration staff which the executive officer determines can be acted upon by the board without a hearing.

(c) Interested parties with concerns or who oppose any item on the non–hearing calendar may submit a written notice to the executive officer stating the nature of the concern or opposition, and explaining how the issue of concern is a merit employment matter within the board's scope of authority as set forth in the State Civil Service Act (Government Code Section 18500 et seq.) and Article VII, California Constitution. Such written notice must be received by the executive officer not later than close of business on the Wednesday before the board meeting at which the item is scheduled.

(d) In investigating matters outlined in subsection (c) the executive officer shall act as the board's authorized representative, and shall recommend to the board either (1) to act on the agenda item as submitted, without a hearing or (2) to hear the item, including a staff recommendation on resolution of the merit issues in dispute.

NOTE: Authority cited: Section 18701, Government Code. Reference: Sections 11125, 18654.5 and 18675, Government Code.

HISTORY

1. Amendment filed 3–9–59; effective thirtieth day thereafter (Register 59, No. 5).
2. Repealer of NOTE filed 4–8–77; effective thirtieth day thereafter (Register 77, No. 15).
3. Amendment filed 12–31–85; effective thirtieth day thereafter (Register 86, No. 1).
4. Amendment of section filed 9–30–91; operative 10–30–91 (Register 91, No. 52).
5. Editorial correction adding inadvertently omitted subsection (d) (Register 95, No. 5).

§ 34.5. Notice of Regular Meeting Agenda.

Whenever notice of an agenda item is required to be given of matters to be heard or considered by the board and a different method is not provided, the executive officer shall cause a notice to be posted at the office of the board at Sacramento at least ten (10) days before the date of hearing giving the nature of the matter and giving notice that all persons interested may appear, at a time and place mentioned in the notice, in support of or in opposition to the matter. Notice of agenda item shall be provided at least ten days in advance of the meeting date, to any person who requests such notice in writing. In cases of emergency the executive officer may shorten the period of notice to not less than one (1) hour.

NOTE: Authority cited: Section 18701, Government Code. Reference: Sections 11125, 11125.5 and 18575, Government Code.

HISTORY

1. New section filed 11–7–49 (Register 18, No. 5).
2. Amendment of NOTE filed 4–8–77; effective thirtieth day thereafter (Register 77, No. 15.
3. Amendment filed 12–31–85; effective thirtieth day thereafter (Register 86, No. 1).

§ 35. Continuances of Items Under Submission.

All matters appearing on the calendar that are not disposed of by a motion to vote by the board shall be considered as items under submission and shall appear on subsequent calendar(s) as items of unfinished business until such a motion is made.

Items may be taken under submission whenever time does not permit sufficient deliberation to call for a motion to vote or when the board requires additional information prior to voting.

NOTE: Authority cited: Section 18701, Government Code. Reference: Section 18653, Government Code.

HISTORY

1. Amendment filed 12–31–85; effective thirtieth day thereafter (Register 86, No. 1).

§ 35.5. Reconsideration and Action.

In any meeting of the board, a vote of three concurring members is required to make any action effective whether that action is to grant or deny an appeal, request, or other matter properly before the board. Where a matter requires such action and a motion to take such action fails for lack of three concurring votes, the matter shall not be dropped from the calendar. Upon the adoption of a motion to reconsider made by any member of the board at the same, or succeeding meeting, the matter shall be reconsidered. If a motion to reconsider is not adopted within three months, the matter shall be dropped from the calendar and the appeal or request shall be deemed denied.

A member of the board may participate in the reconsideration of a matter even though the member was not present during the original consideration if the interested parties agree or if the member has reviewed a transcript of the proceedings and the documents and other materials before the board.

NOTE: Authority cited: Section 18701, Government Code. Reference: Section 18653, Government Code.

HISTORY

1. New section filed 6–8–59; effective thirtieth day thereafter (Register 59, No. 9).
2. Amendment of NOTE filed 4–8–77; effective thirtieth day thereafter (Register 77, No. 15).
3. Amendment filed 12–31–85; effective thirtieth day thereafter (Register 86, No. 1).

§ 36. Roster.

NOTE: Reference: Section 18704, Government Code.

HISTORY

1. New section filed 11–7–49 (Register 18, No. 5).
2. Amendment of NOTE filed 4–8–77; effective thirtieth day thereafter (Register 77, No. 15).
3. Notice of Repeal filed 6–25–87 by OAL pursuant to Government Code Section 11343.8; operative 7–25–87 (Register 87, No. 26).

§ 37. Delegation Authority of the Board and Executive Officer.

Whenever it is stated in these regulations that the "board" may or shall exercise or discharge any power, duty, purpose, function, or jurisdiction,

the State Personnel Board specifically has reserved the same for its own, exclusive action. Whenever it is stated that the "board" or the "executive officer" may or shall exercise or discharge any power, duty, purpose, function, or jurisdiction, either the State Personnel Board or the executive officer thereof may take action thereon. Whenever it is stated that the "executive officer" may or shall exercise or discharge any power, duty, purpose, function, or jurisdiction, the executive officer of the State Personnel Board has the exclusive power to act thereon. Any party in interest may appeal to the State Personnel Board for review of the actions and decisions of the executive officer.

Nothing herein prohibits the executive officer from redelegating to subordinates or to an appointing power he or she designates as provided by Sections 18654 and 18930.5 of the Government Code.

NOTE: Authority cited: Section 18701, Government Code. Reference: Sections 18654 and 18930.5, Government Code.

HISTORY

1. New section filed 7–10–56; effective thirtieth day thereafter (Register 56, No. 13).
2. Amendment of section and NOTE filed 4–8–77; effective thirtieth day thereafter (Register 77, No. 15).
3. Amendment filed 11–20–87; operative 12–20–87 (Register 87, No. 48).
4. Change without regulatory effect amending section filed 9–16–92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 39).

Article 3.5. Selection Standards

§ 50. Merit Selection Manual.

Each agency and department with delegated or decentralized selection responsibilities shall develop and maintain a selection program as specified in the State Personnel Board's *Merit Selection Manual: Policy and Practices,* dated October 2003, and in accordance with existing laws and rules. The State Personnel Board's *Merit Selection Manual: Policy and Practices*, dated October 2003, is hereby incorporated by reference in its entirety.

NOTE: Authority cited: Sections 18211 and 18701, Government Code. Reference: Article 7, Sections 1 and 3, California Constitution; and Sections 18213, 18500, 18900, 18930, 18950 and 19050, Government Code.

HISTORY

1. New article 3.5 (section 50) and section filed 2–6–2003; operative 2–6–2003. Submitted to OAL for printing only pursuant to Government Code section 18213 (Register 2003, No. 7).
2. Amendment of *Merit Selection Manual: Policy and Practices* (incorporated by reference) and amendment of section and NOTE filed 5–17–2004; operative 5–17–2004. Submitted to OAL for printing only pursuant to Government Code sections 18211 and 18213 (Register 2004, No. 21).
3. Amendment of *Merit Selection Manual: Policy and Practices* (incorporated by reference) and amendment of section and NOTE filed 5–17–2004; operative 5–17–2004. Submitted to OAL for printing only pursuant to Government Code sections 18211 and 18213 (Register 2004, No. 22).

Article 4. Hearings and Appeals

§ 51. Scope of Article.

The regulations in this article shall apply to all appellants and respondents and all appeal hearings conducted by the board or its designees.

NOTE: Authority cited: Section 18701, Government Code. Reference: Section 18675, Government Code.

HISTORY

1. Amendment filed 11–7–49 (Register 18, No. 5).
2. Amendment of NOTE filed 4–8–77; effective thirtieth day thereafter (Register 77, No. 15).
3. Amendment filed 4–26–90; operative 5–26–90 (Register 90, No. 22).
4. Change without regulatory effect amending article heading and section filed 9–16–92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 39).

§ 51.1. Definitions.

Unless the context requires otherwise, the following definitions shall apply to regulations in this article.

(a) "Administrative law judge" means a person employed by the board to conduct evidentiary hearings under this article.

(b) "Adverse action" means an action taken by an appointing power to discipline an employee and includes formal reprimand, suspension, reduction–in–salary, demotion and dismissal.

(c) "Appeal" means any written request for relief or review filed as provided in these regulations and includes "application," "petition," "protest," and "complaint."

(d) "Appeals division" means the appeals division of the board.

(e) "Appellant" means the person, or organization filing any appeal.

(f) "Hearing office" means the hearing office of the board.

(g) "Notice" means a written notice indicating the taking of an adverse action or rejection during probationary period.

(h) "Party or parties" means the appellant and the respondent and/or their representatives.

(i) "Rejection during probationary period" or "rejection" means an action to remove an employee from a probationary appointment.

(j) "Respondent" means the person or state agency from whose action or decision the appellant is seeking relief.

NOTE: Authority cited: Section 18701, Government Code. Reference: Section 18675, Government Code.

HISTORY

1. Renumbering and amendment of former sections 52, 53 and 56 to section 51.1 filed 4–26–90; operative 5–26–90 (Register 90, No. 22). For prior history, see Registers 87, No. 48; and 86, No. 1.
2. Change without regulatory effect amending opening sentence and subsection (c) filed 9–16–92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 39).

§ 51.2. Requirements for Filing Appeals with the Board.

Appeals filed with the board shall be subject to the following:

(a) All appeals shall be written.

(b) Except for appeals that are automatically assigned to the hearing office pursuant to Section 52(a), each appeal shall:

(1) clearly identify the facts that form the basis for appeal;

(2) identify all respondents known to the appellant.

(c) Unless the appeal names some other respondent, the appellant's appointing power shall be considered the only respondent.

(d) The appeals division shall mail or serve a copy of the appeal to or on the respondent.

(e) Except as otherwise provided in the act or these regulations, every appeal shall:

(1) be filed with the board, or the appointing power if required by Section 53.1, within 30 days after the appellant has been served with the notice, report, or document from which the appeal is taken.

(2) If there has been no service and none is required, the appeal shall be filed within 30 days after the event upon which the appeal is based.

(3) Upon good cause being shown, the executive officer may allow an appeal,except as otherwise limited by statute, to be filed within 30 days after the end of the period in which the appeal should have been filed.

NOTE: Authority cited: Section 18701, Government Code. Reference: Section 18675, Government Code.

HISTORY

1. Renumbering and amendment of former sections 63 and 64 to section 51.2 filed 4–26–90; operative 5–26–90 (Register 90, No. 22). For prior history, see Register 85, No. 48.
2. Change without regulatory effect amending subsections (b) and (e)–(e)(1) filed 9–16–92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 39).

§ 51.3. Assignment of Appeal to Appropriate Review Process.

(a) The executive officer or his or her designee shall determine the appropriate review process for each appeal, as follows:

(1) The general merit system appeals process shall be used for appeals described by Section 53.

(2) The hearing office process shall be used for appeals described in section 52 or when any portion of an appeal is described in Section 52.

(3) The discrimination complaint process described in Section 54 shall be used for appeals of appointing power actions other than those covered by parts (1) and (2).

(b) This section shall not restrict the board's ability to recall any appeal for hearing and investigation by it.

NOTE: Authority cited: Section 18701, Government Code. Reference: Section 18675, Government Code.

HISTORY

1. New section filed 4–26–90; operative 5–26–90 (Register 90, No. 22).
2. Change without regulatory effect amending section filed 9–16–92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 39).

§ 51.4. Hearings are Public.

Every appeal hearing, including the hearing of an adverse action appeal, shall be public.

NOTE: Authority cited: Section 18701, Government Code. Reference: Section 18675, Government Code.

HISTORY

1. Renumbering and amendment of former section 73 to sections 51.4 and 51.5 filed 4–26–90; operative 5–26–90 (Register 90, No. 22). For prior history, see Register 85, No. 48.

[The next page is 5.]

§ 51.5. Right to Representation.

Any party may be represented by counsel or any other person or organization of the party's choice in any hearing or investigation conducted pursuant to this article.

NOTE: Authority cited: Section 18701, Government Code. Reference: Section 18675, Government Code.

HISTORY

1. Renumbering and amendment of former section 73 to sections 51.4 and 51.5 filed 4–26–90; operative 5–26–90 (Register 90, No. 22). For prior history, see Register 85, No. 48.

§ 51.6. When Decisions Become Final.

Unless a proper application for rehearing is made pursuant to Government Code section 19586, every board decision shall become final 30 days after service by the board of a copy of such decision upon the parties to the proceeding in which the decision is rendered.

NOTE: Authority cited: Section 18701, Government Code. Reference: Section 19586, Government Code.

HISTORY

1. Renumbering and amendment of former section 70 to section 51.6 filed 4–26–90; operative 5–26–90 (Register 90, No. 22). For prior history, see Register 85, No. 48.

§ 51.7. Petitioning for Rehearing.

Either the appellant or the respondent may file a petition for a rehearing of an appeal decision under the provisions of sections 19586 and 19587 of the Government Code.

Action on petitions for rehearing shall be taken within 60 days of the service specified in section 19586 of the Government Code.

NOTE: Authority cited: Section 18701, Government Code. Reference: Section 19586 and 19587, Government Code.

HISTORY

1. Renumbering and amendment of former section 69 to section 51.7 filed 4–26–90; operative 5–26–90 (Register 90, No. 22). For prior history, see Register 85, No. 48.

§ 51.9. Request to File Charges Against State Employees.

A request of the board for consent to file charges under Government Code section 19583.5 shall be in writing and shall be accompanied by the proposed charges. The statement of proposed charges shall be a sworn statement. The statement shall clearly state the facts constituting the cause or causes for adverse action in such detail as is reasonably necessary to enable the accused employee to prepare a defense thereto.

Where it does not appear that the material facts alleged are within the personal knowledge of the complainant, the board may require the complainant to present supporting affidavits from persons having actual knowledge of the facts before acting upon the request.

Once the board has approved a request to file charges, any alleged failure to follow the procedure described above shall not invalidate subsequent proceedings.

NOTE: Authority: Section 18701, Government Code. Reference: Section 19583.5, Government Code.

HISTORY

1. Renumbering and amendment of former section 62 to section 51.9 filed 4–26–90; operative 5–26–90 (Register 90, No. 22). For prior history, see Register 85, No. 48.

§ 52. Appeals Assigned to the Administrative Law Judge Evidentiary/Investigatory Hearing Processes.

(a) The following shall be assigned to the full evidentiary hearing process:

(1) Approved requests to file charges under Government Code section 19583.5.

(2) Appeal of adverse action pursuant to Government Code section 19575 by an employee covered by the Ralph C. Dills Act (Ch. 10.3) (commencing with Section 3512) Div. 4 Title 1.

(3) Appeal of an adverse action pursuant to Government Code section 19575 or 19590 by an employee excluded from the Ralph C. Dills Act (Ch. 10.3) (commencing with Section 3512) Div. 4 Title 1, where the penalty imposed is greater than a suspension without pay for five days or a one–step reduction in pay for four months.

(4) Appeal of rejection during probationary period; or

(5) Any other appeal deemed appropriate by the executive officer, the board or its president.

(b) The following shall be assigned to the Investigatory Hearing Process:

Appeal of adverse action pursuant to Government Code section 19575 or 19590 by an employee excluded from the Ralph C. Dills Act (Ch. 10.3) (commencing with Section 3512) Div. 4 Title 1, where the penalty imposed is an official reprimand or other penalty equal to or less than a suspension without pay for five days or equal to or less than a one–step reduction in pay for four months.

(c) In any case, when a proceeding has been assigned to the administrative law judge evidentiary/investigatory hearing process, the administrative law judge is fully authorized and empowered to grant or refuse extensions of time, to set such proceedings for a full evidentiary hearing or investigatory hearing as provided herein, and to conduct a full evidentiary hearing or investigatory hearing in every such proceeding as provided herein. The administrative law judge is authorized to conduct a full evidentiary hearing in an appeal defined in subdivision (b) above upon mutual agreement of the parties or, upon motion by one of the parties, if the administrative law judge finds it in the interest of fairness to do so. The administrative law judge is also fully authorized and empowered to perform any and all other acts in connection with such proceedings that may be authorized by law or these regulations.

(d) The assignment of a case under the provisions of (a) and (b) shall not preclude the board from recalling the proceedings for hearing by the board.

NOTE: Authority cited: Section 18701, Government Code. Reference: Sections 18671, 18675, 19570, 19756 and 19582, Government Code.

HISTORY

1. Renumbering and amendment of former section 52 to section 51.1, and renumbering and amendment of former section 67 to section 52 filed 4–26–90; operative 5–26–90 (Register 90, No. 22). For prior history, see Register 87, No. 48.
2. Change without regulatory effect amending subsection (b) filed 9–16–92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 39).
3. Amendment of section heading, section and NOTE filed 8–19–97; operative 8–19–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 34).

§ 52.1. Exclusion of Witnesses.

Upon the motion of any party, including the parties to an adverse action proceeding, the administrative law judge shall have the authority to exclude from the hearing room any witnesses not at the time under examination; but a party to the proceeding, or the party's counsel or other person representing a party, shall not be excluded. When a state agency is a party it is entitled to the presence of one other officer or employee in addition to its counsel or representative.

NOTE: Authority cited: Section 18701, Government Code. Reference: Sections 18675, Government Code.

HISTORY

1. Renumbering and amendment of former section 74 to section 52.1 filed 4–26–90; operative 5–26–90 (Register 90, No. 22). For prior history, see Register 87, No. 48.

§ 52.2. Dismissal of Appeals Not Brought to Hearing.

Any appeal assigned to the hearing officer shall be dismissed unless it is brought to hearing within three years after such appeal was filed with the board except where the parties have filed a written stipulation specifically extending said three–year period.

NOTE: Reference: Section 18701, Government Code. Reference: Section 18675, Government Code.

HISTORY

1. Renumbering and amendment of former section 66 to section 52.2 filed 4–26–90; operative 5–26–90 (Register 90, No. 22). For prior history, see Register 85, No. 48.

§ 52.3. Right to Respond to Proposed Action.

(a) At least five working days before the effective date of a proposed adverse action, rejection during the probationary period, or non–punitive termination, demotion, or transfer under Government Code section 19585, the appointing power, as defined in Government Code Section 18524, or an authorized representative of the appointing power shall give the employee written notice of the proposed action. At least 15 calendar days before the effective date of a medical termination, demotion, or

transfer under Government Code section 19253.5 or an application for disability retirement filed pursuant to Government Code section 19253.5(i)(1), the appointing power or an authorized representative of the appointing power shall give the employee written notice of the proposed action. The notice shall include:

(1) the reasons for such action,

(2) a copy of the charges for adverse action,

(3) a copy of all materials upon which the action is based,

(4) notice of the employee's right to be represented in proceedings under this section, and

(5) notice of the employee's right to respond to the person specified in subsection (b).

(b) The person whom the employee is to respond to in subsection (a)(5) shall be above the organizational level of the employee's supervisor who initiated the action unless that person is the employee's appointing power in which case the appointing power may respond to the employee or designate another person to respond.

(c) The procedure specified in this section shall apply only to the final notice of proposed action.

NOTE: Authority cited: Sections 18701 and 19574, Government Code. Reference: Sections 19173, 19253.5, 19574, 19574.1 and 19585, Government Code, and *Skelly v. SPB* (1975) 15 Cal.3d 194.

HISTORY

1. Renumbering and amendment of former section 61 to section 52.3 filed 4–26–90; operative 5–26–90 (Register 90, No. 22). For prior history, see Register 85, No. 48.
2. Amendment filed 3–19–91; operative 4–18–91 (Register 91, No. 14).
3. Change without regulatory effect amending subsection (a) filed 9–16–92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 39).
4. Amendment of subsection (a) and amendment of NOTE filed 6–19–2001; operative 6–19–2001 pursuant to Government Code section 18214 (Register 2001, No. 25).

§ 52.4. Expedited Hearings.

Within ten days after filing an appeal from a dismissal, an appellant may file with the board and serve upon the respondent a written request that the hearing on the appeal be expedited for good cause. Appellant's request shall include documentary evidence and/or sworn declarations in support of the appellant's position. Within seven days after service of appellant's request, respondent shall file its written response to that request and serve that response upon the appellant. Appellant's request may be granted if either the respondent concurs in the request or the administrative law judge determines that good cause exists. The administrative law judge may impose such orders for expedited discovery as the administrative law judge may deem necessary or appropriate. If appellant's request is granted, the matter will be set for hearing within 15 days. The administrative law judge shall prepare the proposed decision within five working days of the hearing for submittal to the board at its next meeting.

NOTE: Authority: Section 18701, Government Code. Reference: Sections 18670, 18703, 19253.5, 19575, 19585 and 19590, Government Code.

HISTORY

1. New section filed 4–26–90; operative 5–26–90 (Register 90, No. 22).
2. Amendment of section and NOTE filed 4–1–2003; operative 4–1–2003 pursuant to Government Code section 11343.4 (Register 2003, No. 14).

§ 52.5. Appeal Continuances.

Continuances shall be granted only upon a showing of good cause or mutual agreement between the parties. When the acts or omissions that lead to an adverse action or rejection also lead to criminal charges being filed against the appellant, continuances shall be granted when the parties mutually concur to allow for completion of the criminal proceedings.

NOTE: Authority: Section 18701, Government Code. Reference: Section 18671.1, Government Code.

HISTORY

1. New section filed 4–26–90; operative 5–26–90 (Register 90, No. 22).

§ 52.6. Investigatory Hearing Process for Lesser Adverse Actions.

(a) Failure of any party to proceed at the investigatory hearing shall be deemed a withdrawal of the action or appeal, unless the investigatory hearing is continued for good cause.

(b) One hundred eighty (180) minutes will be calendared for the investigatory hearing. Each party will be allotted a total of ninety (90) minutes to be allocated at that party's discretion for presentation of its case, including examination and cross–examination of witnesses, presentation of declarations, documentary evidence, and exhibits, and presentation of arguments. While use of the time allotted is at each party's discretion, the suggested format for the hearing is as follows: 5 minutes each for opening statements, 60 minutes each to call witnesses and present declarations, documentary evidence and exhibits, 15 minutes each for cross–examination of the opposing party's witnesses, and 10 minutes each for closing arguments.

(c) The administrative law judge has discretion to ask clarifying questions of the witnesses or the parties at the conclusion of each party's case–in–chief and has sole discretion to extend additional time to each of the parties.

(d) The administrative law judge is not bound by common law/statutory rules of evidence or by technical or formal rules of procedure, except as set forth herein, but shall conduct the investigatory hearing in such a manner as necessary to reach a just and proper decision. Relevant evidence will be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs.

(e) Declarations/affidavits made under penalty of perjury will be admissible even though they are technically hearsay, and may be relied upon by the administrative law judge to make a finding of fact.

Other hearsay is admissible, but cannot be relied upon by the authorized representative to make a finding of fact unless it would be admissible over objection in a civil proceeding or unless corroborated either by witness testimony and/or a declaration or affidavit made under penalty of perjury. The foundation for admitting the declarations/affidavits or other written hearsay may be laid in a declaration/affidavit.

(f) The administrative law judge shall prepare a short–form proposed decision which would be forwarded to the Board within 15 calendar days of the investigatory hearing. The decision will include enough information to allow the Board to exercise its constitutional authority to review disciplinary actions, such as (a) introduction; (b) factual allegations sustained and not sustained, referring to the Notice of Adverse Action; (c) legal causes and not sustained referring to the Notice of Adverse Action and any other applicable legal authority; (d) penalty including brief references to any applicable legal authority; and (e) any finding of fact that the authorized representative decides is necessary to highlight.

(g) Absent Board rejection of proposed decision, each case would be opened and closed in no more than ninety (90) calendar days.

(h) It is the intent of the Board that any finding of fact or law, judgment, conclusion, or final order made by an administrative law judge, pursuant to this process shall not be conclusive or binding in any separate or subsequent action or proceeding, and shall not be used as evidence in any separate or subsequent action or proceeding, between an individual and his or per present or prior employer brought before an arbitrator, court or judge of this state or the United States, regardless of whether the prior action was between the same or related parties or involved the same facts. Any decision rendered pursuant to subdivision (f) above may be cited for purposes of providing progressive discipline.

NOTE: Authority cited: Section 18701, Government Code. Reference: Sections 19570 and 19756, Government Code.

HISTORY

1. New section filed 8–19–97; operative 8–19–97 pursuant to Government Code section 11343.4(d) (Register 97, No. 34).

§ 53. Appeals Assigned to General Merit System Appeals Process.

(a) Unless otherwise specified in these regulations all appeals accepted by the appeals division that are not assigned to the hearing office as specified in Section 52 shall be reviewed and acted upon in accordance with the provisions of this article. This includes appeals such as those pertaining to discrimination complaints, examination results, application rejections hinderance of use of the appeal process, certification withholds, medical rejections and restrictions, departmental denials of requests for reasonable accommodation of personal disabilities, the designation of managerial positions pursuant to Government Code section 3513, merit issue complaints, cancellations of unlawful civil service appointments, interference with promotional opportunity and the use of out–of–class experience to meet minimum qualifications.

(b) Under the General Merit System Process, the executive officer shall either (1) present recommended decisions to the board or (2) make decisions subject to appeal to the board.

NOTE: Authority: Section 18701, Government Code. Reference: Section 18675, Government Code.

HISTORY

1. Renumbering and amendment of former section 53 to sections 51.1 and 53 filed 4–26–90; operative 5–26–90 (Register 90, No. 22). For prior history, see Register 87, No. 48.
2. Change without regulatory effect amending subsection (a) filed 9–16–92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 39).

§ 53.1. Merit Issue Complaints.

(a) Merit issue complaints are complaints that the State Civil Service Act or board regulation or policy has been violated by a state agency. Merit issue complaints do not include appeals of actions that are specifically provided for elsewhere in law or in board regulations. Each state agency shall establish and publicize to its employees its process for addressing merit issue complaints. That process shall include provisions for informing employees of their right to appeal the state agency's decision on the merit issue complaint to the board. Failure of a state agency to respond to a merit issue complaint within 90 days of the date of complaint shall be deemed a denial of the complaint authority and shall release the appellant to file an appeal directly with the board. An appeal of a merit issue complaint shall be filed within 30 days of the state agency's denial of the complaint.

NOTE: Authority: Section 18701, Government Code. Reference: Section 12940, 18675, 18952, 19701, 19702, 19230, 19231, Government Code.

HISTORY

1. New section filed 4–26–90; operative 5–26–90 (Register 90, No. 22).
2. Change without regulatory effect amending subsection (a) filed 9–16–92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 39).

§ 53.2. Reasonable Accommodation Appeals.

Requests for reasonable accommodation are requests from qualified disabled individuals for accommodation to known physical or mental limitations. These requests may be made concerning securing, retaining or advancing in employment in State service. Appointing authorities shall respond to such requests within 20 days of receipt. Appointing authorities shall respond in writing and inform complainants of their right of appeal to the board, within 30 days of receipt of the department's response. Failure to respond to a request within 20 days shall be deemed a denial of the request by the appointing authority and shall release the complainant to file an appeal directly with the board. Such filing shall be done within 30 days of the exhaustion of the 20–day period.

NOTE: Authority: Section 18701, Government Code. Reference: Section 12940, 18675, 18952, 19701, 19702, 19230, 19231, Government Code.

HISTORY

1. New section filed 4–26–90; operative 5–26–90 (Register 90, No. 22).

§ 54. Discrimination Complaint Process.

Any person who believes that he or she has been discriminated against in state employment in violation of part II, chapter 10, article 2 of the Government Code, the Federal Age Discrimination in Employment Act of 1978, or Governor's Executive Order B–54–79, shall have the opportunity to file a complaint with the board. Complaints filed with the board shall follow the provisions of article 4 and the specific provisions of Sections 54.1 and 54.2. All issues arising under these regulations, if not resolved under the process prescribed hereunder or by Sections 53.1 or 53.2, shall be decided by the board, if the complainant so requests.

NOTE: Authority: Section 18701, Government Code. Reference: Section 19700, 19701, 19702, 19702.1, 19702.2, 19702.5, 19703, 19704 and 19705, Government Code.

HISTORY

1. Repealer and section filed 4–26–90; operative 5–26–90 (Register 90, No. 22). For prior history, see Register 87, No. 48.
2. Change without regulatory effect amending section filed 9–16–92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 39).

§ 54.2. Discrimination Complaint Standards for Appointing Powers.

Each appointing power discrimination complaint review shall:

(a) Provide for satisfying the complaint with a minimum of formal procedural requirements, by an organizational level closest to the employee concerned. Such provisions shall include the opportunity for the employee to receive counseling on a confidential basis by an employee who is qualified to give counseling in matters pertaining to discrimination.

(b) Assure that no influence will be used to dissuade the employee from airing a complaint, that no complaint will be suppressed, nor will an employee be subject to reprisal for voicing a complaint or participating in the complaint procedure.

(c) Assure that the employee's complaint will receive preferred, timely and full consideration at each level of review, that investigation into the circumstances surrounding the complaint will be performed by qualified and impartial persons, and that the employee will be informed of all rights at each step of the process, including the right of appeal to the board or to file with the appropriate state or federal agency or court having jurisdiction.

NOTE: Authority: Section 18701, Government Code. Reference: Section 18675, Government Code.

HISTORY

1. Renumbering and amendment of former section 547.2 to section 54.2 filed 4–26–90; operative 5–26–90 (Register 90, No. 22). For prior history, see Register 86, No. 28.

§ 55. Hearing Officer.

HISTORY

1. Repealer filed 4–26–90; operative 5–26–90 (Register 90, No. 22).

§ 56. Whistleblower Retaliation Complaint Process.

(a) Any state employee or applicant for state employment, or any employee or applicant for employment with a California Community College, who believes that he or she has been retaliated against in employment for having reported improper governmental activity, as that phrase is defined in Government Code Section 8547.2(b), or Education Code Section 87162(c), or for having refused to obey an illegal order or directive, as defined in Government Code Section 8547.2(e), or Education Code Section 87162(b), may file a complaint and/or appeal with the State Personnel Board in accordance with the provisions set forth in Sections 56.1–56.8. For purposes of complaints filed by community college employees or applicants for community college employment, the local community college district shall be deemed the "appointing power."

(b) For purposes of Sections 56–56.8, the term "Board" is defined as the five–member State Personnel Board, as appointed by the Governor. The term "Executive Officer" is defined as the Executive Officer of the State Personnel Board, as appointed by the Board. The State Personnel Board shall hereinafter be referred to as the SPB.

NOTE: Authority cited: Sections 18701 and 18214, Government Code. Reference: Sections 87162 and 87164, Education Code; and Sections 8547.2, 8547.8 and 19683, Government Code.

HISTORY

1. New section filed 8–14–2002; operative 8–14–2002 pursuant to Government Code section 18214 (Register 2002, No. 33). For prior history see Register 90, No. 22.
2. Amendment of section and NOTE filed 3–8–2006; operative 3–8–2006. Exempt from the Administrative Procedure Act pursuant to section 18211 of the Government Code and submitted to the Office of Administrative Law for filing with the Secretary of State and publication in the California Code of Regulations pursuant to section 18214 of the Government Code (Register 2006, No. 10).

§ 56.1. Requirements for Filing Whistleblower Retaliation Complaint with the State Personnel Board.

An individual desiring to file a complaint of retaliation with the SPB must adhere to the following requirements:

(a) Prior to filing his or her complaint with the SPB, the complainant shall comply with all other filing requirements, if applicable, set forth in Government Code Section 19683.

(b) The complaint shall be filed with and received by the SPB within one year of the most recent alleged act of reprisal. The complaining party shall submit an original complaint and copy of all attachments, and

enough copies of the complaint and attachments for the SPB to serve each entity and person alleged to have engaged in retaliatory conduct and against whom damages and/or disciplinary action is sought.

(c) All complaints shall be in writing.

(d) Each complaint shall clearly identify the protected activity engaged in by the complainant, the specific act(s) of reprisal or retaliation alleged to have occurred, and the names and business address of the individual(s) and entities alleged to have committed the retaliatory act(s). Each complaint shall specify the relief and/or remedies sought against each entity or individual, including any compensatory damages sought.

(e) If adverse action is sought against any individually named respondent, pursuant to the provisions of Government Code Section 19574, the complaint must clearly state the facts constituting the cause or causes for adverse action in such detail as is reasonably necessary to enable the accused employee to prepare a defense thereto.

(f) Each complaint shall include a sworn statement, under penalty of perjury, that the contents of the written complaint are true and correct.

(g) Each complaint shall be limited to a maximum of 15 pages of double-spaced typed or printed text, not including exhibits. Additional pages may be allowed upon a showing of good cause. The complainant shall submit a separate document with the complaint stating the reasons for good cause.

(h) The above procedures do not apply in those cases where an appellant raises retaliation as an affirmative defense when appealing a notice of adverse action, pursuant to Government Code Sections 19575 or 19590, when appealing a notice of rejection during probation, pursuant to Government Code Section 19175, when appealing a notice of medical action, pursuant to Government Code Section 19253.5, when appealing a notice of non-punitive action, pursuant to Government Code Section 19585, or when appealing a notice of career executive assignment termination pursuant to Government Code Section 19889.2. Neither the remedies nor the relief available to a complaining party pursuant to the provisions of Government Code Sections 8547.8 or 19683, shall, however, be available to a party who raises whistleblower retaliation as either an affirmative defense or as a separate cause of action in any other SPB hearing, unless that party has first complied with all filing requirements set forth in Section 56.1.

NOTE: Authority cited: Sections 18701 and 18214, Government Code. Reference: Section 87164, Education Code; Sections 8547.3, 8547.8, 18670, 18671, 18675, 19175, 19253.5, 19572, 19583.5, 19585, 19683 and 19889.2, Government Code; and Section 6129, Penal Code.

HISTORY

1. New section filed 8-14-2002; operative 8-14-2002 pursuant to Government Code section 18214 (Register 2002, No. 33).
2. Amendment of section heading, section and NOTE filed 3-8-2006; operative 3-8-2006. Exempt from the Administrative Procedure Act pursuant to section 18211 of the Government Code and submitted to the Office of Administrative Law for filing with the Secretary of State and publication in the California Code of Regulations pursuant to section 18214 of the Government Code (Register 2006, No. 10).

§ 56.2. Acceptance of Whistleblower Complaint.

(a) Within 10 working days of receipt of the complaint, the SPB shall determine whether it has jurisdiction over the complaint and whether the complainant meets the filing requirements set forth in Section 56.1. The SPB shall also determine whether the complainant has complied with all other requirements for filing a retaliation complaint, as set forth in Government Code Sections 8547-8547.12 and 19683 and/or Education Code Sections 87160-87164.

(b) If the SPB determines that the complaint does not meet all filing requirements, it shall notify the complaining party in writing that the complaint has not been accepted and the reason(s) for that determination. The complaining party may thereafter be permitted to file an amended complaint within 10 working days of service of the notice of non-acceptance of the complaint.

(c) Unless time is extended by the complaining party in writing, the Executive Officer shall, within 10 working days of receipt of the complaint or amended complaint, notify the complaining party of a decision to either:

(1) dismiss the complaint for failure to meet jurisdictional or filing requirements; or

(2) refer the case for investigation in accordance with the provisions of Section 56.3; or

(3) schedule the case for an informal hearing before an administrative law judge, in accordance with the provisions of Section 56.4.

(d) In accordance with the provisions of Penal Code Section 6129, the SPB shall be entitled to defer review of a complaint filed by an employee of the Department of Corrections and Rehabilitation in those cases where the employee has filed a similar complaint with the Office of the Inspector General.

NOTE: Authority cited: Sections 18701 and 18214, Government Code. Reference: Sections 87160-87164, Education Code; Sections 8547-8547.2, 8547.8, 18670, 18671, 18675, 19572, 19574, 19575, 19683 and 19590, Government Code; and Section 6129, Penal Code.

HISTORY

1. New section filed 8-14-2002; operative 8-14-2002 pursuant to Government Code section 18214 (Register 2002, No. 33).
2. Amendment of section heading, section and NOTE filed 3-8-2006; operative 3-8-2006. Exempt from the Administrative Procedure Act pursuant to section 18211 of the Government Code and submitted to the Office of Administrative Law for filing with the Secretary of State and publication in the California Code of Regulations pursuant to section 18214 of the Government Code (Register 2006, No. 10).

§ 56.3. Cases Referred to Investigation.

(a) If the Executive Officer assigns a complaint for investigation, the Executive Officer or the assigned investigator(s) shall conduct the investigation in the manner and to the degree they deem appropriate, and shall have full authority to question witnesses, inspect documents, and visit state facilities in furtherance of their investigations. All state agencies and employees shall cooperate fully with the investigators, or be subject to disciplinary action for impeding the investigation. The investigators, pursuant to the provisions of Government Code Section 18671, shall have authority to administer oaths, subpoena and require the attendance of witnesses and the production of books or papers, and cause the depositions of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions in civil cases in the superior court of this state under Article 3 (commencing with Section 2016) of Chapter 3 of Title 4 of Part 4 of the Code of Civil Procedure, in order to ensure a fair and expeditious investigation.

(b) The Executive Officer shall issue findings regarding the allegations contained in the complaint and a recommended remedy, if any, based on the investigation, in accordance with the provisions of Section 56.5.

NOTE: Authority cited: Sections 18701 and 18214, Government Code. Reference: Section 87164, Education Code; Sections 8547.8, 18670, 18671, 18675, 19582, 19583.5 and 19683, Government Code; Section 6129, Penal Code; and Section 2016 et seq., Civil Procedure Code.

HISTORY

1. New section filed 8-14-2002; operative 8-14-2002 pursuant to Government Code section 18214 (Register 2002, No. 33).
2. Amendment of section heading, repealer and new section and amendment of NOTE filed 3-8-2006; operative 3-8-2006. Exempt from the Administrative Procedure Act pursuant to section 18211 of the Government Code and submitted to the Office of Administrative Law for filing with the Secretary of State and publication in the California Code of Regulations pursuant to section 18214 of the Government Code (Register 2006, No. 10).

§ 56.4. Cases Referred to Informal Hearing Before an ALJ.

(a) For those complaints assigned to an informal hearing before an administrative law judge, the SPB shall serve notice of the informal hearing on all parties to the complaint a minimum of 30 calendar days prior to the scheduled hearing date. Service on each respondent shall be made at the respondent's business address. The notice shall:

(1) include a complete copy of the complaint with all attachments, and a copy of the statutes and rules governing the informal hearing; and

(2) require each named respondent to serve on the complainant and file with the SPB, at least 10 calendar days prior to the informal hearing, a written response to the complaint, signed under penalty of perjury, specifically addressing the allegations contained in the complaint.

(b) The informal hearing shall be conducted in conformance with those procedures set forth in Government Code Section 11445.10 *et seq.*, and may in the discretion of the administrative law judge, include such supplemental proceedings as ordered by the administrative law judge, and as permitted by Section 11445.10 *et seq.*, to ensure that the case is heard in a fair and expeditious manner. The administrative law judge shall have full authority to question witnesses, inspect documents, visit state facilities in furtherance of the hearing, and otherwise conduct the hearing in the manner and to the degree he or she deems appropriate. The informal hearing and any supplemental proceedings shall be recorded by the administrative law judge. All parties shall, upon request and payment of applicable reproduction costs, be provided with a transcript or a copy of the recording of the informal hearing.

(c) Following the informal hearing and any supplemental proceedings, the administrative law judge shall issue findings for consideration by the Executive Officer regarding the allegations contained in the complaint, together with all recommended relief, if any, proposed to remedy any retaliatory conduct.

(d) The Executive Officer shall have the discretion to adopt the administrative law judge's findings and recommended remedies in their entirety; modify the administrative law judge's findings and recommended remedies; or reject the administrative law judge's findings and recommended remedies, and:

(1) issue independent findings after reviewing the complete record; or

(2) remand the case back to the administrative law judge for further proceedings.

NOTE: Authority cited: Sections 18701 and 18214, Government Code. Reference: Section 87164, Education Code; Sections 8547.8, 11445.10 *et seq.*, 11513, 18670, 18671, 18672, 18675, 19572, 19574, 19575, 19582, 19590, 19592 and 19683, Government Code; and Section 6129, Penal Code.

HISTORY

1. New section filed 8–14–2002; operative 8–14–2002 pursuant to Government Code section 18214 (Register 2002, No. 33).
2. Amendment of section heading, repealer and new section and amendment of NOTE filed 3–8–2006; operative 3–8–2006. Exempt from the Administrative Procedure Act pursuant to section 18211 of the Government Code and submitted to the Office of Administrative Law for filing with the Secretary of State and publication in the California Code of Regulations pursuant to section 18214 of the Government Code (Register 2006, No. 10).

§ 56.5. Findings of the Executive Officer.

(a) The Executive Officer shall issue a Notice of Findings within 60 working days of the date the SPB accepts the complaint pursuant to Section 56.2(c), unless the complaining party agrees, in writing, to extend the period for issuing the findings, or unless the time period is otherwise tolled.

(b) In those cases where the Executive Officer concludes that the allegations of retaliation were not proven by a preponderance of the evidence, the Executive Officer shall issue a Notice of Findings dismissing the complaint. The Notice of Findings shall notify the complainant that his or her administrative remedies have been exhausted and that the complainant may file a civil complaint with the superior court pursuant to Government Code Section 8547.8(c).

(c) In those cases where the Executive Officer concludes that the complainant proved one or more of the allegations of retaliation by a preponderance of the evidence, the Notice of Findings shall identify the allegations deemed substantiated, and the named respondents deemed to have engaged in retaliatory acts toward the complainant. If the Notice of Findings concludes that any individual manager, supervisor, or other employee engaged in improper retaliatory acts, the Notice of Findings shall include the legal causes for disciplinary action under Government Code Section 19572 and the appropriate disciplinary action to be taken against any individual found to have engaged in retaliatory conduct.

(d) The Notice of Findings shall inform any respondent found to have engaged in retaliatory acts of his or her right to request a hearing regarding the Notice of Findings. Any such request shall be filed with the SPB, and served on all other parties within 30 calendar days of the issuance of the Notice of Findings. Upon receipt of a timely request for hearing, the Board shall, at its discretion, schedule a hearing before the Board, or an evidentiary hearing before an administrative law judge, regarding the findings of the Executive Officer. The hearing shall be conducted in accordance with the SPB's rules governing the conduct of evidentiary hearings. If a timely request for hearing is not filed with the SPB, the Notice of Findings shall be deemed the Board's final decision in the case.

NOTE: Authority cited: Sections 18701 and 18214, Government Code. Reference: Section 87164, Education Code; Sections 8547.8, 18670, 18671.1, 18675, 19572, 19574, 19575, 19582, 19590 and 19683, Government Code; and Section 6129, Penal Code.

HISTORY

1. New section filed 8–14–2002; operative 8–14–2002 pursuant to Government Code section 18214 (Register 2002, No. 33).
2. Amendment of section heading, repealer and new section and amendment of NOTE filed 3–8–2006; operative 3–8–2006. Exempt from the Administrative Procedure Act pursuant to section 18211 of the Government Code and submitted to the Office of Administrative Law for filing with the Secretary of State and publication in the California Code of Regulations pursuant to section 18214 of the Government Code (Register 2006, No. 10).

§ 56.6. Disciplinary Action for Proven Retaliatory Acts.

(a) In those cases where the Board issues a final decision that finds that a manager, supervisor, or other state civil service employee has engaged in improper retaliatory acts, the Board shall order the appointing authority to place a copy of the Board's decision in that individual's Official Personnel File within 30 calendar days of the issuance of the Board's order and to also, within that same time period, notify the Office of the State Controller of the disciplinary action taken against the individual. The appointing authority shall also, within 40 calendar days of the issuance of the Board's order, notify the Board that it has complied with the provisions of this subdivision.

(1) In accordance with the provisions of Penal Code Section 6129, subsection (c)(3), any employee of the Department of Corrections and Rehabilitation found to have engaged in retaliatory acts shall be disciplined by, at a minimum, a suspension without pay for 30 calendar days, unless the Board determines that a lesser penalty is warranted. In those instances where the Board determines that a lesser penalty is warranted, the decision shall specify the reasons for that determination.

(b) In those cases where the Board issues a final decision that finds that any community college administrator, supervisor, or public school employer, has engaged in improper retaliatory acts, the Board shall order the appointing authority to place a copy of the Board's decision in that individual's Official Personnel File within 30 calendar days of the issuance of the Board's order and to also, within 40 calendar days of the issuance of the Board's order, notify the Board that it has complied with the provisions of this subdivision.

(c) Any decision, as described in subdivision (a) or (b), shall be deemed a final decision of the Board and the individual against whom the disciplinary action was taken shall not have any further right of appeal to the Board concerning that action, with the exception of a Petition for Rehearing.

(d) For purposes of this Section, the Board's decision is deemed to be final after:

(1) a request for hearing pursuant to Section 56.5(d) has not been timely filed with the Board; or

(2) 30 calendar days has elapsed from the date that the Board has issued a decision adopting or modifying the proposed decision submitted by an administrative law judge after an evidentiary hearing and a Petition for Rehearing concerning that decision has not been filed with the Board; or

(3) a decision has been issued by the Board after a hearing before that body and no Petition for Rehearing concerning that decision has been filed with the Board.

NOTE: Authority cited: Sections 18701 and 18214, Government Code. Reference: Section 87164, Education Code; Sections 8547.8, 18670, 18671, 18675, 18710, 19572, 19574, 19582, 19583.5, 19590, 19592 and 19683, Government Code; and Section 6129, Penal Code.

HISTORY

1. New section filed 8–14–2002; operative 8–14–2002 pursuant to Government Code section 18214 (Register 2002, No. 33).

2. Amendment of section and NOTE filed 3–8–2006; operative 3–8–2006. Exempt from the Administrative Procedure Act pursuant to section 18211 of the Government Code and submitted to the Office of Administrative Law for filing with the Secretary of State and publication in the California Code of Regulations pursuant to section 18214 of the Government Code (Register 2006, No. 10).

§ 56.7. Consolidation with Other Hearings.

(a) The SPB or the assigned administrative law judge shall possess the requisite discretion to direct that separate, reasonably related cases be consolidated into a single hearing. Whenever two or more cases are consolidated, the assigned administrative law judge shall permit the parties a reasonable opportunity to conduct discovery prior to the first scheduled hearing date, if the discovery provisions set forth in Section 57 et seq. are negatively impacted by the consolidation.

(b) In those cases where one or more individually named respondents have been joined in the consolidated hearing, the administrative law judge may, in his or her discretion, make such orders as may appear just in order to prevent any named respondent from being embarrassed, delayed, or put to undue expense, and may order separate hearings or make such other order as the interests of justice may require.

(c) In those cases where an appeal from adverse action, rejection during probationary period, medical action, or non–punitive action is consolidated with a whistleblower retaliation complaint, and the whistleblower retaliation complaint identifies specifically named individuals against whom damages or adverse action is sought pursuant to the provisions of Section 56.1(d) and (e), each individually named respondent shall have the right to participate in the consolidated hearing in such a manner as to reasonably defend him or herself against the allegations contained in the whistleblower retaliation complaint. These rights shall include, but not be limited to:

(1) to be represented by a representative of his or her own choosing during the consolidated hearing;

(2) to present a defense on his or her own behalf concerning the allegations and issues raised in the whistleblower retaliation complaint, separate and apart from any defense presented by the appointing power or any other named respondent;

(3) to conduct pre–hearing discovery concerning allegations and issues raised in the whistleblower retaliation complaint;

(4) to examine and cross examine witnesses concerning allegations and issues raised in the whistleblower retaliation complaint;

(5) to introduce and challenge the introduction of evidence concerning allegations and issues raised in the whistleblower retaliation complaint; and

(6) to present oral and/or written argument to the decision–maker concerning allegations and issues raised in the whistleblower retaliation complaint.

NOTE: Authority cited: Sections 18701 and 18214, Government Code. Reference: Sections 8547.8, 11513, 18670, 18671, 18672, 18675, 19175, 19253.5, 19575, 19582, 19585, 19590 and 19683, Government Code.

HISTORY

1. New section filed 8–14–2002; operative 8–14–2002 pursuant to Government Code section 18214 (Register 2002, No. 33).
2. Amendment of section and NOTE filed 3–8–2006; operative 3–8–2006. Exempt from the Administrative Procedure Act pursuant to section 18211 of the Government Code and submitted to the Office of Administrative Law for filing with the Secretary of State and publication in the California Code of Regulations pursuant to section 18214 of the Government Code (Register 2006, No. 10).

§ 56.8. Evidentiary Hearing Procedures and Representation by the Executive Officer.

(a) The hearing conducted pursuant to Section 56.5(d), shall be conducted in accordance with the SPB's rules of practice and procedure for the conduct of hearings before the Board, or evidentiary hearings before an administrative law judge. Any proposed decision issued by an administrative law judge after an evidentiary hearing shall be subject to review by the Board.

(b) The administrative law judge assigned to conduct the evidentiary hearing shall not be the same administrative law judge who conducted the informal investigative hearing in the case, unless all parties to the action request, in writing, that the same administrative law judge be assigned to conduct the evidentiary hearing.

(c) The discovery procedures set forth in Section 57 *et seq.*, shall be applicable to those evidentiary hearings conducted pursuant to this Section.

(d) The Executive Officer, or his or her designee, shall have the authority, in his or her discretion, to prosecute the complaint and present evidence regarding his or her findings during a hearing before the Board, and/or during an evidentiary hearing before an administrative law judge. The Executive Officer, or his or her designee, shall have the discretion to present the case in the manner he or she deems to be appropriate, including, but not limited to, the issues to be presented, the evidence to be presented, and the witnesses, if any, to be questioned.

(1) The complaining party shall be permitted to be represented by a representative of his or her own choosing during any hearing before either the Board, and/or an administrative law judge, and shall be permitted to raise relevant issues, present relevant evidence, and question witnesses regarding relevant matters during those hearings where witness testimony is permitted.

(2) In those cases where the Executive Officer, or his or her designee prosecutes a case during an evidentiary hearing before an administrative law judge, the case shall be assigned to an administrative law judge from the Office of Administrative Hearings.

NOTE: Authority cited: Sections 18701 and 18214, Government Code. Reference: Section 87164, Education Code; Sections 8547.8, 18670, 18671, 18675, 19572, 19574, 19575, 19590 and 19683, Government Code; and Section 6129, Penal Code.

HISTORY

1. New section filed 8–14–2002; operative 8–14–2002 pursuant to Government Code section 18214 (Register 2002, No. 33).
2. Repealer and new section filed 3–8–2006; operative 3–8–2006. Exempt from the Administrative Procedure Act pursuant to section 18211 of the Government Code and submitted to the Office of Administrative Law for filing with the Secretary of State and publication in the California Code of Regulations pursuant to section 18214 of the Government Code (Register 2006, No. 10).

§ 57.1. Discovery in Evidentiary Hearings Before the Board or a Board Administrative Law Judge.

(a) An employee who is served with a Notice of Adverse Action pursuant to the provisions of Government Code Sections 19574 or 19590 shall be entitled to conduct discovery in accordance with the provisions of Government Code Sections 19574.1 and 19574.2. In those cases where an employee raises an affirmative defense alleging discrimination or retaliation when filing an answer to a Notice of Adverse Action pursuant to the provisions of Government Code Sections 19575 or 19590, or in those cases where an employee raises an affirmative defense of retaliation or discrimination during the course of a hearing before the Board or an administrative law judge regarding an appeal from adverse action, the appointing power or any other named respondent shall be entitled to conduct discovery regarding any such affirmative defense in accordance with the provisions of Sections 57.2–57.4.

(b) Any party to any other type of action scheduled for hearing before the Board and/or a Board administrative law judge, including but not limited to, rejections during probationary period (Government Code Section 19173), discrimination complaints (Government Code Section 19702), appeals from denial of reasonable accommodation (Government Code Section 19702), whistleblower retaliation complaints (Education Code Section 87164, Government Code Sections 8547.8 and 19683), appeals from non–punitive action (Government Code Section 19585), appeals from medical action (Government Code Section 19253.5), appeals from Career Executive Assignment termination (Government Code Section 19889.2), and appeals from constructive medical termination, shall be entitled to conduct discovery in accordance with the provisions of Sections 57.2–57.4.

(c) The discovery provisions set forth in Sections 57.2–57.4 shall not apply to those cases scheduled for hearing or review by the Executive Officer or a Board hearing officer, to informal hearings conducted by Board administrative law judges pursuant to Government Code Section 11445.10 *et seq.*, to those cases assigned to hearing before a Board ad-

ministrative law judge pursuant to the provisions of Section 52(b), to appeals from termination of Limited Term employees pursuant to Section 282, to appeals from termination of a Limited Examination and Appointment Program appointment pursuant to Section 547.57, or to any other appeal or complaint excluded from the formal evidentiary hearing process pursuant to statute or regulation.

(d) The time frames for service of process set forth in Sections 57.2–57.4 shall apply in those circumstances were service is made or attempted by mail, and service shall not be deemed effective on the date of mailing. Instead, service by mail shall be deemed effective only upon such time as the document being served is either actually received by the person or entity being served, or is legally presumed to have been delivered pursuant to the provisions of Code of Civil Procedure Section 1013, whichever date occurs first.

NOTE: Authority cited: Sections 18701 and 18214, Government Code. Reference: Section 87164, Education Code; Sections 8547.8, 11445.10 *et seq.*, 18670, 18671, 18672, 18672.1, 18673, 18675, 19173, 19175, 19253.5, 19574, 19574.1, 19574.2, 19575, 19585, 19590, 19683, 19700–19706 and 19889.2, Government Code; and Section 1013, Code of Civil Procedure.

HISTORY

1. New section filed 8–12–2002; operative 8–12–2002. Submitted to OAL for printing only pursuant to Government Code section 18214 (Register 2002, No. 33).
2. Change without regulatory effect amending section filed 11–26–2002 pursuant to section 100, title 1, California Code of Regulations (Register 2002, No. 48).
3. Amendment of section heading, repealer and new section and amendment of NOTE filed 2–28–2006; operative 2–28–2006. Exempt from the Administrative Procedure Act pursuant to section 18211 of the Government Code and submitted to the Office of Administrative Law for filing with the Secretary of State and publication in the California Code of Regulations pursuant to section 18214 of the Government Code (Register 2006, No. 9).

§ 57.2. Request for Discovery; Statements; Writings; Investigative Reports; Witness List.

(a) Each party to an appeal or complaint listed in Section 57.1(a) or (b) and scheduled for a hearing is entitled to serve a request for discovery on any other named party to the complaint or appeal as allowed by subdivisions (c)–(e), and Government Code Section 18673. All requests for discovery shall be served on the responding party no later than 40 calendar days prior to the initial hearing date, except upon a petition and showing of good cause by the party seeking discovery, and a finding by the administrative law judge, in his or her sole discretion, that such additional or late requests for discovery should be permitted in the furtherance of justice. For purposes of this Section, the term "party" is defined as the person, or appointing power filing the appeal or complaint, any named respondent, and their designated legal representatives.

(b) Each party to the appeal or complaint is entitled to request and receive from any other party to the appeal or complaint the names and home or business addresses of percipient witnesses to the event(s) in question, to the extent known to the other party and of individuals who may be called as witnesses during the course of the hearing, except to the extent that disclosure of the address is prohibited by law. The responding party may, in his or her discretion, provide either the home or business address of the witness, except to the extent that disclosure of the address is prohibited by law.

(c) Each party to the appeal or complaint is entitled to inspect and make a copy of any of the following non–privileged materials in the possession, custody, or control of any other party to the appeal or complaint:

(1) Statements, as that term is defined in Evidence Code Section 225, of witnesses proposed to be called as witnesses during the hearing by the party and of other persons having personal knowledge of the act, omission, event, decision, condition, or policy which are the basis for the appeal. The responding party shall, upon a showing of good cause and subject to the discretion of the administrative law judge, subsequently amend this list if it intends to call additional witnesses not previously disclosed;

(2) All writings, as that term is defined in Evidence Code Section 250, that the responding party proposes to enter into evidence. The responding party shall, upon a showing of good cause and subject to the discretion of the administrative law judge, subsequently provide the requesting party with additional writings that it proposes to enter into evidence;

(3) Any other writing or thing that is relevant to the appeal or complaint; and

(4) Investigative reports made by or on behalf of any party to the appeal or complaint pertaining to the subject matter of the proceeding, to the extent that these reports: (A) contain the names and home or business addresses of witnesses or other persons having personal knowledge of the facts, omissions or events which are the basis for the proceeding, unless disclosure of the address is prohibited by law, or (B) reflect matters perceived by the investigator in the course of his or her investigation, or (C) contain or include by attachment any statement or writing described in (A) to (C), inclusive, or summary thereof.

(d) All parties receiving a request for discovery shall produce the information requested, or shall serve a written response on the requesting party clearly specifying which of those requested matters will not be produced and the basis for the non–production, within 15 calendar days of receipt of the discovery request.

(e) Not less than 10 calendar days prior to the first scheduled hearing date on the merits, each party shall notify the other parties in writing of the identity and current business address of each expert witness to be presented as a witness at the hearing, and a brief narrative statement of the qualifications of such witnesses and the general substance of the testimony which the expert is expected to provide. At the same time, the parties shall also exchange all written reports prepared by each expert witness. The administrative law judge may permit a party to call an expert witness not included on the list upon a showing of good cause.

NOTE: Authority cited: Sections 18701 and 18214, Government Code. Reference: Section 87164, Education Code; Sections 225 and 250, Evidence Code; and Sections 8547.8, 18670, 18671, 18672, 18672.1, 18673, 18675, 19683 and 19700–19706, Government Code.

HISTORY

1. New section filed 8–12–2002; operative 8–12–2002. Submitted to OAL for printing only pursuant to Government Code section 18214 (Register 2002, No. 33).
2. Amendment of section and NOTE filed 2–28–2006; operative 2–28–2006. Exempt from the Administrative Procedure Act pursuant to section 18211 of the Government Code and submitted to the Office of Administrative Law for filing with the Secretary of State and publication in the California Code of Regulations pursuant to section 18214 of the Government Code (Register 2006, No. 9).

§ 57.3. Petition to Compel Discovery.

(a) A party may serve and file with the administrative law judge a petition to compel discovery, naming as responding party any party who has refused or failed to provide discovery as required by Section 57.2. A copy of the petition shall be served on the responding party on the same date the petition is filed with the administrative law judge.

(b) The petition shall state facts showing the responding party failed or refused to comply with Section 57.2, a description of the matters sought to be discovered, the reason or reasons why the matter is discoverable under that Section, that a reasonable and good faith attempt to contact the responding party for an informal resolution of the issue has been made, and the grounds of the responding party's refusal so far as known to the moving party.

(c)(1) The petition shall be served upon the responding party and filed with the administrative law judge within 14 days after the responding party first evidenced his or her failure or refusal to comply with Section 57.2 or within 30 calendar days after the request was made and the party has failed to reply to the request, whichever period is longer. However, no petition may be filed within 20 calendar days of the date set for commencement of the administrative hearing, except upon a petition and a determination by the administrative law judge of good cause. In determining good cause, the administrative law judge shall consider the necessity and reasons for the discovery, the diligence or lack of diligence of the moving party, whether the granting of the petition will delay the commencement of the administrative hearing on the date set, and the possible prejudice of the action to any party.

(2) The responding parties shall have a right to file a written answer to the petition. Any answer shall be filed with the administrative law

judge and served on the petitioner within 10 calendar days of service of the petition.

(3)(A) Unless otherwise stipulated by the parties and as provided by this Section, the administrative law judge shall review the petition and any response filed by the respondent and issue a decision granting or denying the petition within 15 calendar days after the filing of the petition. Nothing in this Section shall preclude the administrative law judge from determining that an evidentiary hearing on the underlying matter shall be conducted prior to the issuance of a decision on the petition. The administrative law judge shall serve a copy of the order upon the parties by mail and/or by facsimile transmission.

(B) Where the matter sought to be discovered is in the possession, custody, or control of the responding party and the responding party asserts that the matter is not a discoverable matter under Section 57.2, or is privileged or otherwise exempt from disclosure, the administrative law judge may order lodged with him or her matters that are provided in Section 915(b) of the Evidence Code and shall examine the matters in accordance with the provisions thereof.

(d) Any party aggrieved by the decision of the administrative law judge concerning a petition to compel the production of evidence or to compel the attendance of a witness may, within 30 calendar days of the service of the decision, file a petition to compel discovery in the superior court for the county in which the administrative hearing will be held or in the county in which the headquarters of the appointing power is located. A party applying for judicial relief from the decision of the Board or the administrative law judge concerning any disputed discovery issue shall give notice to the Board and all other parties to the action. The notice may be either oral at the time of the administrative law judge's decision, or written at the same time application is made for judicial relief.

(e) The administrative law judge may, upon his or her own motion, or upon the motion of one or more parties to the action and upon a showing of good cause, exercise his or her discretion to continue the initial hearing date in order to resolve any contested discovery issues.

NOTE: Authority cited: Sections 18701 and 18214, Government Code. Reference: Section 87164, Education Code; Section 915, Evidence Code; and Sections 8547.8, 18670, 18671, 18672, 18672.1, 18673, 18675, 19683 and 19700–19706, Government Code.

HISTORY

1. New section filed 8–12–2002; operative 8–12–2002. Submitted to OAL for printing only pursuant to Government Code section 18214 (Register 2002, No. 33).
2. Amendment of section and NOTE filed 2–28–2006; operative 2–28–2006. Exempt from the Administrative Procedure Act pursuant to section 18211 of the Government Code and submitted to the Office of Administrative Law for filing with the Secretary of State and publication in the California Code of Regulations pursuant to section 18214 of the Government Code (Register 2006, No. 9).

§ 57.4. Petition to Quash or for Protective Order.

(a) Any party claiming that a request for discovery pursuant to Section 57.2 is improper under that section or is otherwise privileged or exempt from discovery, may object to its terms by serving and filing with the administrative law judge and the party requesting the disputed discovery, a petition to quash or for a protective order. The petition shall state: (1) a description of the matters sought to be discovered; (2) the reason(s) why the matter is not discoverable under Section 57.2, or is otherwise privileged or exempt from discovery; and (3) that a reasonable and good faith attempt has been made to contact the requesting party and resolve the matter informally.

(b)(1) The petition shall be served upon the party seeking discovery and filed with the administrative law judge within 10 calendar days after the moving party was served with the discovery request, or within another time provided by stipulation, whichever period is longer. No petition may be filed after the applicable time period has expired except upon petition and a determination by the administrative law judge of good cause. In determining good cause, the administrative law judge shall consider the necessity and reason(s) for the petition, the diligence or lack of diligence of the petitioning party, whether the granting of the petition will delay commencement of the hearing on the date set, and the possible prejudice of the action to any party.

(2) The party requesting discovery shall have a right to file a written answer to the petition with the administrative law judge and served on the petitioner within 5 calendar days of the service of the petition to quash and/or for a protective order.

(3)(A) Unless otherwise stipulated by the parties and as provided by this section, the administrative law judge shall review the petition and any response and issue a decision granting or denying the petition within 20 calendar days after the filing of the petition.

(B) The administrative law judge shall have the discretion to continue any evidentiary hearing or to conduct the hearing prior to the issuance of a decision on the petition.

(C) Where the matter sought to be discovered is in the possession, custody, or control of the responding party and the responding party asserts that the matter is not a discoverable matter under Section 57.2, or is privileged or otherwise exempt from disclosure, the administrative law judge may order lodged with him or her matters that are provided in Section 915(b) of the Evidence Code and shall examine the matters in accordance with the provisions thereof.

(c) A ruling of the administrative law judge concerning a petition to quash or for a protective order is subject to review in the same manner and to the same extent as the Board's final decision in the proceeding. Any party aggrieved by the decision of the administrative law judge concerning a petition to quash the production of evidence and/or for a protective order may, within 30 calendar days of the service of the decision, file a petition to quash and/or for protective order in the superior court for the county in which the administrative hearing will be held or in the county in which the headquarters of the appointing power is located. A party applying for judicial relief from the decision of the Board or the administrative law judge concerning any disputed discovery issue shall give notice to the Board and all other parties to the action. The notice may be either oral at the time of the administrative law judge's decision, or written at the same time application is made for judicial relief.

NOTE: Authority cited: Sections 18701 and 18214, Government Code. Reference: Section 87164, Education Code; Section 915, Evidence Code; and Sections 8547.8, 18670, 18671, 18672, 18672.1, 18673, 18675, 19683 and 19700–19706, Government Code.

HISTORY

1. New section filed 8–12–2002; operative 8–12–2002. Submitted to OAL for printing only pursuant to Government Code section 18214 (Register 2002, No. 33).
2. Amendment of section and NOTE filed 2–28–2006; operative 2–28–2006. Exempt from the Administrative Procedure Act pursuant to section 18211 of the Government Code and submitted to the Office of Administrative Law for filing with the Secretary of State and publication in the California Code of Regulations pursuant to section 18214 of the Government Code (Register 2006, No. 9).

§ 60. Definition and Purpose.

Mediation refers to a process whereby a neutral third person called a Mediator acts to encourage and facilitate the resolution of a dispute between two or more parties. It is a voluntary, informal and nonadversarial process with the objective of helping the disputing parties reach a mutually acceptable written agreement. In mediation, decision making authority rests with the parties, not the Mediator. The role of the Mediator includes, but is not limited to, assisting the parties in identifying issues, fostering joint problem solving, and exploring resolution alternatives.

The purpose of the State Personnel Board's State Employee Mediation Program (SEMP) is to provide an efficient, inexpensive, non–adversarial alternative to managing or resolving disputes that occur within the workplace, without diminishing the rights of any party to the mediation to subsequently address the issue(s) in a more traditional administrative, judicial, or other forum.

NOTE: Authority cited: Section 18701, Government Code. Reference: Section 11420.20, Government Code.

HISTORY

1. New section filed 4–4–2002; operative 4–4–2002. Submitted to OAL for printing only pursuant to Government Code section 18214 (Register 2002, No. 14). For prior history, see Register 90, No. 22.

§ 60.1. Exclusivity.

The model regulations related to alternative dispute resolution implemented by the Office of Administrative Hearings (1 Cal. Code Regs.,

Sections 1200–1230), pursuant to Government Code Section 11420.20, are not applicable to SEMP.

NOTE: Authority cited: Section 18701, Government Code. Reference: Section 11420.20, Government Code.

HISTORY

1. New section filed 4–4–2002; operative 4–4–2002. Submitted to OAL for printing only pursuant to Government Code section 18214 (Register 2002, No. 14). For prior histor, see Register 90, No. 22.

§ 60.2. Scope.

Any party to a dispute that is either pending, or has the potential to come before, the Appeals Division of the State Personnel Board, may request that the dispute be referred to mediation.

NOTE: Authority cited: Section 18701, Government Code. Reference: Section 11420.20, Government Code.

HISTORY

1. New section filed 4–4–2002; operative 4–4–2002. Submitted to OAL for printing only pursuant to Government Code section 18214 (Register 2002, No. 14).

§ 60.3. Referral of Proceedings.

(a) Any party to a dispute may initiate mediation by filing a request for mediation with the SEMP unit of the Appeals Division. The application shall contain:

(1) a statement as to whether an appeal or complaint has been filed with the State Personnel Board or whether the dispute is pending in any other forum;

(2) an election to mediate the dispute;

(3) the name of the appointing authority and the names, addresses, telephone and fax numbers or other appropriate electronic communication addresses or numbers of all individual parties to the dispute; and

(4) a statement as to whether all of the parties to the dispute have agreed to mediation.

(b) Filing a request for mediation constitutes consent to submit the dispute to mediation. A request for mediation shall not stay any pending proceeding and shall have no effect on any procedural or substantive right of any party to the dispute, unless each party agrees otherwise in writing.

(c) A designee of the State Personnel Board shall review the application to determine if the dispute is suitable for mediation. If it is determined that the dispute is not suitable for mediation, the designee of the State Personnel Board shall notify the requesting party of that fact. If it is determined that the dispute is suitable for mediation, the designee of the State Personnel Board shall assign the matter to a Mediator for case development.

(d) Upon receipt of assignment of the mediation, the Mediator shall contact the party requesting mediation as well as the other parties to the dispute to determine whether all parties have agreed to mediate, confirm that the case is suitable for mediation, and develop the case for mediation. The Mediator will discuss with each party their perspective of the facts, issues, and expectations for the mediation.

(e) If the Mediator is unable to confirm that all of the parties to the dispute are willing to mediate, or if the Mediator determines the dispute is not suitable for mediation, the parties shall be so notified and the matter closed or referred back to the appropriate Appeals Division process.

NOTE: Authority cited: Section 18701, Government Code. Reference: Section 11420.20, Government Code.

HISTORY

1. New section filed 4–4–2002; operative 4–4–2002. Submitted to OAL for printing only pursuant to Government Code section 18214 (Register 2002, No. 14).

§ 60.4. Date, Time and Place of Mediation.

Once the Mediator has confirmed voluntary participation by the disputing parties, and has confirmed that the case is suitable for mediation, the Mediator shall, in consultation with the parties and co–Mediator, fix the date, time, and place of each mediation session. The mediation shall be held at any convenient location agreeable to the parties and the Mediator. The mediation need not be completed within any set period of time, and more than one mediation session may be scheduled if all parties and the Mediator agree that additional mediation sessions would prove productive. Statutory, regulatory, and other timelines related to the dispute itself will not be affected unless by written stipulation of the parties.

NOTE: Authority cited: Section 18701, Government Code. Reference: Section 11420.20, Government Code.

HISTORY

1. New section filed 4–4–2002; operative 4–4–2002. Submitted to OAL for printing only pursuant to Government Code section 18214 (Register 2002, No. 14).

§ 60.5. Attendance at Mediation.

All involved, consenting parties shall attend the mediation session(s). A party other than a natural person (e.g., a governmental entity) satisfies this attendance requirement by sending a representative familiar with the facts of the dispute, and that person shall have the authority to negotiate and effectively recommend settlement to the governmental entity involved. Any party to the mediation may have the assistance of an attorney or other representative, but the role of the representative may be limited by agreement of the parties and the Mediator so as to best effectuate the goals of the mediation.

NOTE: Authority cited: Section 18701, Government Code. Reference: Section 11420.20, Government Code.

HISTORY

1. New section filed 4–4–2002; operative 4–4–2002. Submitted to OAL for printing only pursuant to Government Code section 18214 (Register 2002, No. 14).

§ 60.6. Standards of Conduct for Neutral Mediators.

Any Mediator, whether a trained volunteer or paid, participating in the mediation pursuant to these regulations shall comply in good faith with the California statutes and regulations governing mediation, including Evidence Code Sections 703 and 1115–1128 and 2 Cal. Code Regs., Sections 60–60.10.

NOTE: Authority cited: Section 18701, Government Code. Reference: Section 11420.20, Government Code.

HISTORY

1. New section filed 4–4–2002; operative 4–4–2002. Submitted to OAL for printing only pursuant to Government Code section 18214 (Register 2002, No. 14).

§ 60.7. Agreements.

Agreements resolving the mediated dispute may be written, signed, and dated by the parties or an authorized representative of the party or parties.

NOTE: Authority cited: Section 18701, Government Code. Reference: Section 11420.20, Government Code.

HISTORY

1. New section filed 4–4–2002; operative 4–4–2002. Submitted to OAL for printing only pursuant to Government Code section 18214 (Register 2002, No. 14).

§ 60.8. Termination of Mediation.

Any party or the Mediator may terminate the mediation at any time by written notice to or by the Mediator and all other parties to the mediation, or in any other manner provided by Evidence Code Section 1125. If any party or the Mediator terminates the mediation, or if the mediation does not result in resolution, the parties shall resume the same status as before the mediation and shall proceed as if mediation had not taken place.

NOTE: Authority cited: Section 18701, Government Code. Reference: Section 11420.20, Government Code.

HISTORY

1. New section filed 4–4–2002; operative 4–4–2002. Submitted to OAL for printing only pursuant to Government Code section 18214 (Register 2002, No. 14).

§ 60.9. Confidentiality of Communications.

Confidentiality shall be governed by Evidence Code §703.5 and Evidence Code Sections 703.5 and 1115–1128.

NOTE: Authority cited: Section 18701, Government Code. Reference: Section 11420.20, Government Code.

HISTORY

1. New section filed 4–4–2002; operative 4–4–2002. Submitted to OAL for printing only pursuant to Government Code section 18214 (Register 2002, No. 14).

§ 60.10. Alternate Resolution of the Complaint/Appeal.

It is the policy of the Board to encourage parties to a complaint/appeal to attempt to resolve the complaint/appeal informally through use of the State Personnel Board's State Employee Mediation Program. Toward that end, if the parties to a complaint/appeal filed with the Board mutually

request, in writing, an extension of any deadlines set forth in Board regulations concerning any hearing conducted by the Board in an effort to utilize the above-referenced alternative dispute resolution processes, the Board or its designated representative may grant such a request for an extension not to exceed 60 days.

NOTE: Authority cited: Section 18701, Government Code. Reference: Section 11420.20, Government Code.

HISTORY

1. New section filed 4–4–2002; operative 4–4–2002. Submitted to OAL for printing only pursuant to Government Code section 18214 (Register 2002, No. 14).

§ 61. Right to Respond to Charges Prior to Punitive Action.

NOTE: Reference: Section 19574, Government Code.

HISTORY

1. New section filed 10–16–75 as an emergency; designated effective 10–16–75 (Register 75, No. 42).
2. Amendment filed 1–15–76 as an emergency; designated effective 1–15–76. Certificate of Compliance included (Register 76, No. 3).
3. Amendment of section and NOTE filed 4–8–77; effective thirtieth day thereafter (Register 77, No. 15).
4. Renumbering and amendment of former section 61 to section 52.3 filed 4–26–90; operative 5–26–90 (Register 90, No. 22). For prior history, see Register

§ 62. Request to File Charges.

NOTE: Reference: Section 19583.5, Government Code.

HISTORY

1. New section filed 11–25–53; effective thirtieth day thereafter (Register 53, No. 21).
2. Amendment of section and NOTE filed 4–8–77; effective thirtieth day thereafter (Register 77, No. 15).
3. Renumbering and amendment of former section 62 to section 51.9 filed 4–26–90; operative 5–26–90 (Register 90, No. 22).

§ 63. Appeal.

HISTORY

1. Renumbering and amendment of former section 63 to section 51.2 filed 4–26–90; operative 5–26–90 (Register 90, No. 22). For prior history, see Register 85, No. 48.

§ 64. Time of Filing.

HISTORY

1. New sections 64 and 65 filed 12–23–47 (Register 10, No. 8).
2. Repealer of NOTE filed 4–8–77; effective thirtieth day thereafter (Register 77, No. 15).
3. Renumbering and amendment of former section 64 to section 51.2(e) filed 4–26–90; operative 5–26–90 (Register 90, No. 22).

§ 65. Answer.

Unless required by law or these rules, no answer to the appeal need be filed. If an answer is filed prior to the hearing, a copy thereof shall be mailed by the executive officer or hearing officer to the appellant. If no answer is filed and none is required, every material allegation of the appeal is in issue.

HISTORY

1. Editorial correction restoring inadvertently omitted section (Register 95, No. 5).

§ 66. Dismissal of Appeals Not Brought to Hearing.

NOTE: Reference: Section 18675, Government Code.

HISTORY

1. New section filed 5–17–68; effective thirtieth day thereafter (Register 68, No. 18).
2. Amendment of NOTE filed 4–8–77; effective thirtieth day thereafter (Register 77, No. 15).
3. Renumbering and amendment of former section 66 to section 52.2 filed 4–26–90; operative 5–26–90 (Register 90, No. 22).

§ 67. Reference to Hearing Officer.

NOTE: Authority cited: Section 18701, Government Code. Reference: 18671, 18675 and 19582, Government Code.

HISTORY

1. Amendment of section and NOTE filed 4–8–77; effective thirtieth day thereafter (Register 77, No. 15). For prior history, see Register 60, No. 24.
2. Amendment filed 11–26–85; effective thirtieth day thereafter (Register 85, No. 48).
3. Renumbering and amendment of former section 67 to section 52 filed 4–26–90; operative 5–26–90 (Register 90, No. 22).

§ 68. Hearing and Decision.

NOTE: Reference: Sections 18675 and 19582, Government Code.

HISTORY

1. Amendment of section and NOTE filed 4–8–77; effective thirtieth day thereafter (Register 77, No. 15). For prior history, see Register 53, No. 16.
2. Repealer filed 4–26–90; operative 5–26–90 (Register 90, No. 22).

§ 69. Rehearing.

NOTE: Authority: Section 18701, Government Code. Reference: Sections 19700, 19701, 19702, 19702.1, 19702.2, 19702.5, 19703, 19704 and 19705, Government Code.

HISTORY

1. New article 25 (sections 547, 547.1 and 547.2) filed 3–22–76; effective thirtieth day thereafter (Register 76, No. 13).
2. Amendment of NOTE filed 4–8–77; effective thirtieth day thereafter (Register 77, No. 15).
3. Renumbering and amendment of former section 69 to section 51.7 filed 4–26–90; operative 5–26–90 (Register 90, No. 22).

§ 70. Decision Becomes Final When.

HISTORY

1. Amendment filed 6–28–48 (Register 13, No. 3).
2. Renumbering and amendment of former section 70 to section 51.6 filed 4–26–90; operative 5–26–90 (Register 90, No. 22).

§ 73. Public Hearing; Counsel.

HISTORY

1. Renumbering and amendment of former section 73 to sections 51.4 and 51.5 filed 4–26–90; operative 5–26–90 (Register 90, No. 22). For prior history, see Register 85, No. 48.

§ 74. Exclusion of Witnesses.

HISTORY

1. New section filed 11–13–48 (Register 11, No. 2)
2. Amendment filed 4–8–77; effective thirtieth day thereafter (Register 77, No. 15).
3. Renumbering and amendment of former section 74 to section 52.1 filed 4–26–90; operative 5–26–90 (Register 90, No. 22).

Article 5. Compensation

§ 90. Attendance Records.

NOTE: Authority cited: Section 18850, Government Code. Reference: Section 18024, Government Code.

HISTORY

1. New section filed 11–7–49 (Register 18, No. 5).
2. Amendment of section and NOTE filed 4–8–77; effective thirtieth day thereafter (Register 77, No. 15).
3. Repealer of Article 5 (Sections 90, 91, 91.1, 91.5, 92–95, 98, 98.1–98.7, 98.9, 101, 102, 102.5–102.7, 103, 106, 108, 111 and 112) filed 8–28–85; effective thirtieth day thereafter (Register 85, No. 35). For prior history of Article 5, including Sections 96, 97, 100, 104, 107, 109 and 110, see Register 77, No. 15.

Article 6. Overtime

§ 130. Definitions.

NOTE: Authority cited: Section 18020, Government Code. Reference: Sections 18020, 18021 and 18023, Government Code.

HISTORY

1. Amendment of NOTE filed 4–8–77; effective thirtieth day thereafter (Register 77, No. 15). For prior history, see Register 54, No. 22.
2. Repealer of Article 6 (Sections 130, 130.5, 131–137, 137.5, 139 and 139.1) filed 8–28–85; effective thirtieth day thereafter (Register 85, No. 35). For prior history of Article 6, including Section 138, see Registers 79, No. 42 and 77, No. 15.

Article 7. Employment Lists

For the general statutory provisions on this subject, refer to Section 18900 of the act and sections following.

§ 151. Eligibility After Appointment.

When an eligible receives a limited term appointment, that eligible's name shall be continued on the employment list for permanent certification. When an eligible receives a permanent appointment, that eligible's name shall be removed from the employment list.

HISTORY

1. Amendment of section filed 4–8–77; effective thirtieth day thereafter (Register 77, No. 15).

§ 151.3. Restoration of Name for Limited–Term Certification.

Upon the recommendation of an appointing power and with the approval of the executive officer, the name of an employee who has served satisfactorily under limited–term appointment and who resigns may be restored to the employment list for further limited–term certification.

NOTE: Reference: Section 19083, Government Code.

HISTORY

1. New section filed 7–10–56; effective thirtieth day thereafter (Register 56, No. 13).
2. Amendment of NOTE filed 4–8–77; effective thirtieth day thereafter (Register 77, No. 15).

§ 151.5. Limited Term Eligible Lists.

When the needs of the service require, the executive officer may hold examinations and establish eligible lists therefrom for use exclusively in making limited term appointments. No person shall be given a permanent appointment nor gain permanent status by appointment from such a limited term eligible list.

NOTE: Reference: Section 19083, Government Code.

HISTORY

1. New section filed 10–10–50 as an emergency; effective upon filing (Register 22, No. 1).
2. Amendment filed 7–10–56; effective thirtieth day thereafter (Register 56, No. 13).
3. Amendment of NOTE filed 4–8–77; effective thirtieth day thereafter (Register 77, No. 15).

§ 152. Preferred Limited Term List.

A preferred limited term list may be established for any class, containing the names of limited term employees who have served satisfactorily in positions recurring seasonally in a given state agency and who have been recommended by the appointing power for inclusion on such list. Such preferred limited term list shall be established to correspond to the same geographical, organizational, or functional subdivisions of state agencies as may be observed in establishing the departmental reemployment lists for the same class. Names shall be included on the preferred limited term list in the relative order of the original examination ratings of the eligibles. In filling limited term vacancies in a given state agency, the preferred limited term list for that agency shall be given preference over the eligible list but not over any other employment list. The name of any eligible included on the preferred limited term list may be continued on such list after the abolishment of the eligible list from which the eligible was originally certified; but under no circumstances and at no time shall any person be certified from the preferred limited term list to a permanent position or be permitted to acquire permanent status as a result of certification and appointment from any such list.

§ 153. Inactive Status.

If a person's name is placed on inactive status at that person's request, it may, upon that person's written request and in the discretion of the executive officer, be restored to active status on the list. If a person's name is placed on inactive status without that person's request, it will be restored to active status only if the board or the executive officer finds that there is good cause therefor. In any case, the person's name may be restored to active status only if the employment list on which the person has inactive status is still in existence; and the name shall be restored to active status according to the person's earned rating in the examination or combined score for efficiency and seniority, when restored to a reemployment list in a class designated as professional, scientific, administrative, management or executive, as the case may be.

NOTE: Authority cited: Section 18701, Government Code. Reference: Section 18900, Government Code.

HISTORY

1. Amendment filed 4–8–77; effective thirtieth day thereafter (Register 77, No. 15).
2. Amendment filed 10–9–85; effective thirtieth day thereafter (Register 85, No. 42).

§ 154. Transfer of Promotional List Eligibility.

Employees with promotional list eligibility who move from one agency or subdivision to another agency or subdivision without a break in service may transfer such promotional list eligibility to the appropriate promotional list of the new agency or subdivision is such list was established as a result of an examination for the same subject matter and with the same education and experience admittance requirements.

An employee who reenters State service in a new agency or subdivision within 6 months after a resignation and who, had he/she returned to the former agency or subdivision, would have been eligible for certification from a promotional list under (the) provisions of Section 240, may apply to have eligibility transferred to the appropriate list or lists of the new agency or subdivision under the provisions of this rule.

Eligibility shall be transferred upon receipt of the written request of the employee with the concurrence of the employee's new appointing power and the employee's name shall then be placed on the appropriate promotional list or lists in accordance with the score received in the examination.

When the movement of an employee is the result of the transfer of a function or the administration of a law from one State agency to another State agency, the above restrictions are not applicable.

NOTE: Authority cited: Section 18701, Government Code. Reference: Section 18950, Government Code.

HISTORY

1. Amendment of section and NOTE filed 4–8–77; effective thirtieth day thereafter (Register 77, No. 15). For prior history, see Register 61, No. 26.
2. Amendment filed 4–3–79; effective thirtieth day thereafter (Register 79, No. 14).
3. Amendment filed 2–6–87; effective thirtieth day thereafter (Register 87, No. 6).
4. Change without regulatory effect amending section filed 9–16–92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 39).

Article 8. Examinations

For the general statutory provisions on this subject, refer to Section 18930 of the act and sections following.

§ 171. Announcement.

Examinations shall be held at such times and places as the executive officer may determine. The executive officer shall direct the preparation of every examination and the publication of an announcement thereof. The announcement shall specify the basis of competition to be permitted in the examination. An examination may be given on a promotional–only basis, a combined open and promotional basis, an open–only basis, or an open, nonpromotional basis. Each announcement shall state the title, salary range, and where appropriate, the duties of the class; the method of evaluating the education, experience, and personal qualifications of the competitors; such information as is required by the act and these rules; and such additional information as the executive officer may deem proper. An examination may be canceled by the executive officer at any time prior to the establishment of the employment list.

NOTE: Reference: Section 18950, Government Code.

HISTORY

1. Amendment filed 11–1–72; effective thirtieth day thereafter (Register 72, No. 45). For prior history, see Register 70, No. 47.
2. Amendment of NOTE filed 4–8–77; effective thirtieth day thereafter (Register 77, No. 15).

§ 171.1. Amount of Time Required to Meet Minimum Qualifications.

Unless otherwise provided in the class specification adopted by the board, when determining whether an applicant has completed the minimum time required by the experience component in the minimum qualifications prescribed for the class, the following shall apply:

(a) The calendar time required shall have been in a full–time job or work assignment. A full–time job or work assignment is the maximum number of hours an individual can spend on a job without a requirement that he/she be given overtime compensation or, where overtime is not applicable, the number of hours required for an individual to receive full–time pay for the applicable work period.

(b) An applicant must have the required calendar time unless the applicant worked two different jobs concurrently. the time spent on two different qualifying jobs worked concurrently shall be added together to determine the total amount of qualifying experience.

(c) Hours worked on the same job in excess of full–time (i.e., overtime hours) shall not be credited as additional time.

(d) Less than full–time experience shall be credited based upon the percentage of full–time worked while employed less than full–time [e.g., half–time (50%) employment for six months equals three months of full–time experience].

NOTE: Authority cited: Government Code Section 18701. Reference: Government Code Section 18931.

HISTORY

1. New section filed 7–3–90; operative 8–2–90 (Register 90, No. 35).

§ 172. General Qualifications.

All candidates for, appointees to, and employees in the state civil service shall possess the general qualifications of integrity, honesty, sobriety, dependability, industry, thoroughness, accuracy, good judgment, initiative, resourcefulness, courtesy, ability to work cooperatively with others, willingness and ability to assume the responsibilities and to conform to the conditions of work characteristic of the employment, and a state of health, consistent with the ability to perform the assigned duties of the class. Where the position requires the driving of an automobile, the employee must have a valid state driver's license, a good driving record and is expected to drive the car safely. The foregoing general qualifications shall be deemed to be a part of the personal characteristics of the minimum qualifications of each class specification and need not be spe-

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cifically set forth therein. The board may prescribe alternative or additional qualifications for individual classes and such shall be made a part of the class specifications.

NOTE: Authority cited: Section 18701, Government Code. Reference: Sections 18931 and 18935, Government Code.

HISTORY

1. Amendment of NOTE filed 4–8–77; effective thirtieth day thereafter (Register 77, No. 15). For prior history, see Register 72, No. 39.
2. Amendment filed 11–20–87; operative 12–20–87 (Register 87, No. 48).

§ 172.1. Waiver of Additional Special Personal Characteristics.

An alternative or additional special personal characteristic stated in the specification for an individual class may, upon the recommendation of the State Medical Officer, be waived for a "subject to proper placement" eligible for a specific position within the class wherein such waiver would not affect the satisfactory performance of the duties assigned to the specific position. Incumbents with "subject to proper placement" status may not transfer to another position within the class without a reevaluation of the incumbent's medical capabilities in relation to the new position. (Persons who are "subject to proper placement" have completed the medical examination; however, they have certain medical conditions that may hazardously conflict with the job duties or the performance required of most, but not all, positions within the classification.)

NOTE: Reference: Sections 18930 and 19253.5, Government Code.

HISTORY

1. New section filed 4–14–77; effective thirtieth day thereafter (Register 77, No. 16).

§ 172.2. Citizenship.

HISTORY

1. New section filed 12–24–57; effective thirtieth day thereafter (Register 58, No. 1).
2. Amendment filed 11–22–68 as an emergency; effective upon filing. Certificate of Compliance included (Register 68, No. 44).
3. Repealer filed 11–1–72; effective thirtieth day thereafter (Register 72, No. 45).

§ 172.3. Medical Examinations During Employment.

In accordance with Government Code Section 19253.5, the appointing power may require an employee to submit to a medical examination.

NOTE: Reference: Section 19253.5, Government Code.

HISTORY

1. Amendment of NOTE filed 4–8–77; effective thirtieth day thereafter (Register 77, No. 15). For prior history, see Register 67, No. 37.

§ 172.4. Definition of Psychological Screening.

Psychological screening is the mandatory pre–employment assessment of the psychological fitness of candidates for appointment as peace officers including peace officers in either a youth or adult correctional facility.

NOTE: Authority cited: Sections 18211, 18213 and 18701, Government Code. Reference: Sections 1031(f) and 18931, Government Code; and Section 13601(a), Penal Code.

HISTORY

1. New section filed 2–22–88; operative 3–23–88 (Register 88, No. 10).
2. Amendment of section and NOTE filed 4–19–2005; operative 4–19–2005. Submitted to OAL for printing only pursuant to Government Code sections 18211 and 18213 (Register 2005, No. 16).

§ 172.5. Definition of Qualified Professional.

A qualified professional shall meet the criteria set forth in Government Code Section 1031, subdivision (f).

NOTE: Authority cited: Sections 18211, 18213 and 18701, Government Code. Reference: Section 1031(f), Government Code; and Section 13601(a), Penal Code.

HISTORY

1. New section filed 2–22–88; operative 3–23–88 (Register 88, No. 10). For history of former section 172.5, see Register 72, No. 28.
2. Change without regulatory effect amending section filed 9–16–92 pursuant to section 100, title 1, *California Code of Regulations* (Register 92, No. 39).
3. Amendment of section and NOTE filed 4–19–2005; operative 4–19–2005. Submitted to OAL for printing only pursuant to Government Code sections 18211 and 18213 (Register 2005, No. 16).

§ 172.6. Responsibility for Psychological Screening.

The board shall psychologically screen candidates for peace officer classifications, unless the board delegates to an appointing power the authority to conduct psychological screenings in accordance with this regulation. No appointing power shall conduct any psychological screenings without prior board authorization, except as otherwise authorized by law. Any request for authorization must be submitted in writing to the board. An appointing power authorized by the board to conduct psychological screening shall do so in accordance with the procedures defined in Sections 172.7, 172.8, 172.9, and 172.10.

NOTE: Authority cited: Sections 18211, 18213 and 18701, Government Code. Reference: Section 18500, Government Code.

HISTORY

1. New section filed 2–22–88; operative 3–23–88 (Register 88, No. 10).
2. Amendment of section heading, section and NOTE filed 4–19–2005; operative 4–19–2005. Submitted to OAL for printing only pursuant to Government Code sections 18211 and 18213 (Register 2005, No. 16).

§ 172.7. Standards and Procedures for Psychological Screening.

The standards and procedures for conducting psychological screening shall be as follows:

(1) Minimum Psychological Standards. In order to be certified as a peace officer, a candidate must be found to be free from any job relevant psychological, emotional or mental traits, characteristics, or conditions that might adversely affect the performance of the duties and powers of a peace officer.

(2) Psychological Tests. Each candidate shall take a minimum of two written psychological tests (inventories) consistent with the requirements of the Commission on Peace Officer Standards and Training (POST).

(3) Evaluation Interview. Each candidate shall have a face–to–face evaluation interview conducted by a qualified professional as defined in Section 172.5 and selected by the board's Psychological Officer. With respect to each candidate, the interviewing qualified professional shall have prior access to all psychological screening tests and questionnaire data, summaries of available prior screening reports, summaries of available prior mental health evaluation/treatment records and salient medical records, and a summary of the appointing power's background investigation report.

(4) Report of Findings. The interviewing qualified professional shall submit to the board's Psychological Officer a recommendation as to whether the candidate meets the minimum psychological standards for appointment as a peace officer, together with a detailed report of findings and opinions that explain and support the recommended decision.

(5) Screening Determination. The board's Psychological Officer shall determine whether candidates should be certified as meeting the psychological standards for appointment as peace officers, subject to the right of appeal to the board. In determining whether a candidate meets the psychological standards for appointment as a peace officer, the board's Psychological Officer shall consider the qualified professional's report of findings, written psychological test data, and substantiating behavioral evidence derived from one or more of the following sources: prior evaluation and/or treatment records; background investigation or other information collected by the appointing power or the board; the candidate's self–report of personal history; and behavior manifested in the evaluation interview.

NOTE: Authority cited: Sections 18211, 18213 and 18701, Government Code. Reference: Sections 1031(f)–(g) and 18931, Government Code; and Sections 13503, 13506, 13510, 13510.5 and 13601(a), Penal Code.

HISTORY

1. New section filed 2–28–88; operative 3–23–88 (Register 88, No. 10).
2. Change without regulatory effect amending section filed 9–16–92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 39).
3. Repealer of former section 172.7 and renumbering of former section 172.8 to section 172.7, including amendment of section and NOTE, filed 4–19–2005; operative 4–19–2005. Submitted to OAL for printing only pursuant to Government Code sections 18211 and 18213 (Register 2005, No. 16).

§ 172.8. Psychological Screening Withhold from Certification.

The board may withhold or withdraw from certification, prior to appointment, any candidate who does not meet the minimum psychological standards as defined in Section 172.7(1).

NOTE: Authority cited: Sections 18211, 18213 and 18701, Government Code. Reference: Section 18935, Government Code.

HISTORY

1. New section filed 2–28–88; operative 3–23–88 (Register 88, No. 10).
2. Change without regulatory effect amending subsections (1) and (3) filed 9–16–92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 39).
3. Renumbering of former section 172.8 to section 172.7 and renumbering of former section 172.9 to section 172.8, including amendment of section and NOTE, filed 4–19–2005; operative 4–19–2005. Submitted to OAL for printing only pursuant to Government Code sections 18211 and 18213 (Register 2005, No. 16).

§ 172.9. Appeal of Psychological Screening Withhold.

Candidates withheld or withdrawn from certification pursuant to Section 172.8 may file a written appeal. Any such appeal shall be filed within 30 days after the candidate is notified that he or she had been withheld or withdrawn from certification. Upon receipt of the written appeal, the Appeals division will forward to the candidate instructions for obtaining an evaluation from an outside qualified professional selected by the candidate, including a release form to be signed by the candidate authorizing the release of psychological screening records to the qualified outside professional. The appeal may be dismissed if the candidate fails to return the signed authorization prior to obtaining an evaluation from the outside professional. The qualified outside professional shall, within 90 days of the date that the appeal is filed with the board, submit a signed written report stating an opinion as to whether the candidate meets the minimum psychological standards for appointment as a peace officer, together the documentation of findings that explain and support that opinion. The appeal may be dismissed if the selected outside professional does not submit the requisite report within the 90 day time period. The appeal shall be dismissed if the qualified professional selected by the candidate does not submit an evaluation report recommending that the candidate meets the minimum psychological standards for appointment as a peace officer. Upon timely receipt of a positive evaluation opinion and report from the selected outside professional, the appeal shall be scheduled for review.

NOTE: Authority cited: Sections 18211, 18213 and 18701, Government Code. Reference: Section 18670, Government Code.

HISTORY

1. New section filed 2–22–88; operative 3–23–88 (Register 88, No. 10).
2. Renumbering of former section 172.9 to section 172.8 and renumbering of former section 172.10 to section 172.9, including amendment of section and NOTE, filed 4–19–2005; operative 4–19–2005. Submitted to OAL for printing only pursuant to Government Code sections 18211 and 18213 (Register 2005, No. 16).

§ 172.10. Retention of Psychological Screening Records.

The board shall retain all psychological screening testing materials, written reports and related records for a minimum of five years. These records shall be the exclusive property of the board. Confidentiality of these materials and related information shall be maintained consistent with laws governing the collection, maintenance, and release of medical and psychological information, including but not limited to the Information Practices Act of 1977 (Title 1.8 of Division Third, Part 4 of the Civil Code, commencing with Section 1798) and the Confidentiality of Medical Information Act (Part 2.6 of Division First of the Civil Code, commencing with Section 56).

NOTE: Authority cited: Sections 18211, 18213 and 18701, Government Code. Reference: Section 18931, Government Code.

HISTORY

1. New section filed 2–22–88; operative 3–23–88 (Register 88, No. 10).
2. Change without regulatory effect amending section filed 9–16–92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 39).
3. Renumbering of former section 172.10 to section 172.9 and renumbering of former section 172.11 to section 172.10, including amendment of section heading, section and NOTE, filed 4–19–2005; operative 4–19–2005. Submitted to OAL for printing only pursuant to Government Code sections 18211 and 18213 (Register 2005, No. 16).

§ 172.11. Retention of Psychological Screening Testing Materials.

NOTE: Authority cited: Section 18701, Government Code. Reference: Section 18931, Government Code.

HISTORY

1. New section filed 2–22–88; operative 3–23–88 (Register 88, No. 10).
2. Renumbering of former section 172.11 to section 172.10 filed 4–19–2005; operative 4–19–2005. Submitted to OAL for printing only pursuant to Government Code sections 18211 and 18213 (Register 2005, No. 16).

§ 173. Fee.

There shall be no examination fee except that an applicant may be required to furnish certain medical examination information without expense to the state.

NOTE: Reference: Sections 18931 and 19261, Government Code.

HISTORY

1. Amendment filed 11–7–69; effective thirtieth day thereafter (Register 69, No. 45).
2. Amendment of NOTE filed 4–8–77; effective thirtieth day thereafter (Register 77, No. 15).

§ 174. Applications.

All applications must be filed at the place, within the time, in the manner, and on the form specified in the examination announcement. A separate application shall be filed for each examination unless otherwise specified in the examination announcement. All applications shall remain on file for at least two years and thereafter until ordered destroyed by the executive officer. Under no circumstances will applications for examinations in progress or examinations be returned to applicants. The names of applicants shall not be made public.

Filing an application "within the time" shall mean postmarked by the postal service or date stamped at one of the State Personnel Board offices (or the appropriate office of the agency administering the examination) by the date specified.

An application not postmarked or date stamped by the specified date shall be accepted under one of the following conditions:

(a) The application was delayed due to a verified error on the part of the staff of the State Personnel Board or other agency conducting the examination or through a documented administrative error by postal authorities.

(b) An application for an examination is submitted in error to the wrong State agency and was either postmarked by the postal service or date stamped by the agency to which addressed on or before the date specified.

(c) The employing agency verifies examination announcement distribution problems which prevented timely notification to an employee of a promotional examination. Posting in a centralized location of each branch, district, institution, region or office of the department shall constitute notification of an employee. The examination must be one in which the department would typically have competitors and receive announcements for internal distribution.

(d) The employing agency verifies that the applicant failed to receive timely notice of a promotional examination because the employee was away from his/her normal place of work during the entire examination publicity period due to work assignment, vacation, sick leave, or leave of absence. The examination must be one the employee would typically be expected to compete in.

NOTE: Authority cited: Section 18701, Government Code. Reference: Section 18934, Government Code; Section 1602.31, Title 29, Chapter XIV, Code of Federal Regulations.

HISTORY

1. Amendment filed 9–15–53; effective thirtieth day thereafter (Register 53, No. 16).
2. Amendment of NOTE filed 4–8–77; effective thirtieth day thereafter (Register 77, No. 15).
3. Amendment filed 5–6–81; effective thirtieth day thereafter (Register 81, No. 19).
4. Amendment filed 7–3–86; effective thirtieth day thereafter (Register 86, No. 27).

§ 174.6. Compilation of Ethnic, Sex and Disability Information.

The executive officer may gather and maintain information regarding the success or failure of applicants by ethnic group, disability, and sex in State civil service examinations. Such information may be voluntarily provided by the applicant on a detachable section of the application.

NOTE: Authority cited: Section 18930, Government Code. Reference: Section 19705, Government Code.

HISTORY

1. New section filed 7–16–75; effective thirtieth day thereafter (Register 75, No. 29).
2. Amendment of NOTE filed 4–8–77; effective thirtieth day thereafter (Register 77, No. 15).
3. Amendment filed 10–9–85; effective thirtieth day thereafter (Register 85, No. 42).

§ 174.7. Use of Ethnic, Sex and Disability Information.

(a) Ethnic, sex and disability information shall not be used in a discriminatory manner in the selection process.

(b) Such information shall only be used for one or more of the following purposes:

(1) research and statistical analysis to assess the fairness of the selection process in regard to ethnicity, sex, and the disabled; or

(2) to provide a basis for corrective action when adverse effect is present, and

(3) to evaluate the State's affirmative action programs.

NOTE: Authority cited: Section 18701, Government Code. Reference: Sections 19702.1 and 19792, Government Code.

HISTORY

1. New section filed 7–16–75; effective thirtieth day thereafter (Register 75, No. 29).
2. Amendment of NOTE filed 4–8–77; effective thirtieth day thereafter (Register 77, No. 15).
3. Amendment filed 8–29–79; effective thirtieth day thereafter (Register 79, No. 35).
4. Amendment filed 1–19–89; operative 2–18–89 (Register 89, No. 4).
5. Change without regulatory effect of subsection (b) pursuant to section 100, Title 1, California Code of Regulations filed 5–16–90 (Register 90, No. 22).

§ 174.8. Confidentiality of Ethnic, Sex and Disability Information.

The executive officer shall implement procedures to insure that ethnic and sex information shall be accessible only to authorized persons. Ethnic and disability information on an individual applicant shall not be available to any member of an oral interview panel, performance testing panel, or the appointing power or the appointing power's representative prior to the offer of an appointment.

NOTE: Authority cited: Section 18930, Government Code. Reference: Section 19705, Government Code.

HISTORY

1. New section filed 7–16–75; effective thirtieth day thereafter (Register 75, No. 29).
2. Amendment of NOTE filed 4–8–77; effective thirtieth day thereafter (Register 77, No. 15).

[The next page is 11.]

3. Amendment filed 10–9–85; effective thirtieth day thereafter (Register 85, No. 42).

§ 175. Authorization to Take Examination.

Each applicant shall be notified of the approval or disapproval of his application. The applicant's authorization to take the examination shall be in such form as may be prescribed by the executive officer.

§ 176. Questions Approved and Sealed.

All examination questions shall be approved by the executive officer in advance of the examination. In transmitting material containing examination questions, each package thereof shall be securely sealed to be opened by the authorized agent of the executive officer prior to the examination. The correctness of the contents are to be verified and any discrepancies reported immediately. Security procedures prescribed by the executive officer are to be followed.

NOTE: Authority cited: Section 18701, Government Code. Reference: Sections 19680 and 19681, Government Code.

HISTORY

1. Amendment filed 7–13–79; effective thirtieth day thereafter (Register 79, No. 28).

§ 177. Explanations.

All necessary explanations will be made to the whole group taking the written examination and no question will be explained to any individual competitor. Examiners shall not make any comment that may assist any competitor to answer any question.

§ 178. Prohibited Acts.

Communication between competitors during examination is strictly forbidden; and competitors are forbidden to receive any unauthorized assistance in the examination. Before the commencement of an examination, competitors will be required to hand to the examiner any unauthorized printed or written matter in their possession that might serve to aid them in the examination. Evidence of copying or collusion may result in the cancellation of his examination and the debarment of the competitor from future state civil service examinations of any kind. Copies of the questions in the examination may not be made or taken from the examination room.

§ 179. Identity Concealed.

Written examinations shall be so managed that the identity of any applicant shall be concealed from persons responsible for determining a passing score until all the examination papers shall have been marked, except in examinations in which the papers are scored objectively and both the key answers and the passing score have been predetermined.

NOTE: Authority cited: Sections 18930 and 19704, Government Code.

HISTORY

1. Amendment filed 3–9–59; effective thirtieth day thereafter (Register 59, No. 5).
2. Amendment filed 7–2–74; effective thirtieth day thereafter (Register 74, No. 27).
3. Amendment of NOTE filed 4–8–77; effective thirtieth day thereafter (Register 77, No. 15).

§ 180. Prohibited Marks.

Any competitor in any written examination who places any identifying mark upon an examination paper, other than as instructed by the examination proctor, may be deprived of all benefits under such examination.

NOTE: Reference: Sections 18930 and 19704, Government Code.

HISTORY

1. Amendment filed 7–2–74; effective thirtieth day thereafter (Register 74, No. 27).
2. Amendment of section and NOTE filed 4–8–77; effective thirtieth day thereafter (Register 77, No. 15).

§ 185. Rating of Written Examinations.

All examination papers shall be marked and graded under the direction of the executive officer and in accordance with the examination announcement. When, in the course of grading a competitor's papers, it becomes apparent that competitor would receive a general average percentage less than the minimum percentage for eligibility fixed by the executive officer or that competitor would receive less than the minimum percentage required on a given portion of the examination then the competitor shall be considered as having been disqualified and the marking of that competitor's papers need not be completed.

HISTORY

1. Originally published 3–22–45 (Title 2).
2. Revision filed 4–11–47 (Register 7).
3. Amendment filed 12–23–47 (Register 10, No. 8).
4. Amendment filed 4–8–77; effective thirtieth day thereafter (Register 77, No. 15).

§ 186. Inspection of Examination Papers.

Examination papers shall be open to inspection only as provided by these regulations.

HISTORY

1. Change without regulatory effect amending section filed 9–16–92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 39).

§ 187. Time for Inspection.

Except as otherwise provided herein, upon written request filed in the office of the board within 60 days after notice of the result of their examinations have been mailed to them, competitors may compare their answer sheets with a scoring key at such location as may be designated by the executive officer for the purpose of determining whether their answers have been accurately scored. Such inspection shall be under supervision of a member of the staff or other authorized representative of the board. Answer sheets for copyrighted or standardized examinations may be excluded by the executive officer from such inspection.

NOTE: Reference: Section 18934, Government Code.

HISTORY

1. Amendment filed 9–15–53; effective thirtieth day thereafter (Register 53, No. 16).
2. Amendment filed 10–28–58; effective thirtieth day thereafter (Register 58, No. 20).
3. Amendment of section and NOTE filed 4–8–77; effective thirtieth day thereafter (Register 77, No. 15).

§ 188. Who May Inspect.

A competitor's examination papers shall be open to inspection only by: the competitor; the competitor's attorney upon written authorization of the competitor; or, with approval of the executive officer, the appointing power to whom the eligible has been certified.

NOTE: Authority cited: Section 18701, Government Code. Reference: Section 18934, Government Code.

HISTORY

1. Amendment filed 4–8–77; effective thirtieth day thereafter (Register 77, No. 15).
2. Amendment filed 7–13–79; effective thirtieth day thereafter (Register 79, No. 28).

§ 189. Copying Prohibited.

Copying questions or answers contained in written examination papers, making erasures or alterations in the markings on the papers, or any mutilation thereof by any person is forbidden. Evidence that a competitor or the competitor's attorney has copied from, altered, or mutilated an examination paper may result in the competitor's debarment from competition in future examinations or the cancellation of the competitor's eligibility for employment in the state civil service, or both.

HISTORY

1. Amendment filed 4–8–77; effective thirtieth day thereafter (Register 77, No. 15).

§ 190. Appeal from Written Examination.

During regular office hours in the seven calendar days beginning on the first working day after a written examination has been held and at any of the offices of the board or such other places as may be designated by the executive officer, any competitor may inspect a keyed copy of the questions in the competitor's examination for the express purpose of requesting review of such items as the competitor may believe are incorrectly or improperly keyed. Keyed copies of copyrighted or standardized

examinations will not be available for review. The executive officer may also, for examinations given to fill urgent and immediate vacancies in the state service, provide that there will be no key inspection privileges. Notice of the suspension of this privilege shall be made a part of the written examination instructions given to each competitor at the time of the written examination. The competitor may, during the period of inspection provided above, file with the executive officer a written appeal from any part of the test, citing the item or items against which the appeal is directed and stating the reason for such appeal. The examination shall not be scored until all the disputed items have been reviewed and appropriate adjustment, if any, made by correction in the scoring key or elimination of the disputed items. In no event is the executive officer required to furnish keyed copies of questions of an essay or problem type when in executive officer's judgment such questions are not subject to scoring by an absolute standard.

In addition to the appeal hereinabove provided, a written appeal may be made from the result of the written examination on the grounds of fraud or clerical error in scoring the papers. Such appeal must be filed with the board within 60 days after notice of the result of the competitor's examination has been mailed to the competitor filing the appeal.

HISTORY

1. Amendment filed 4–8–77; effective thirtieth day thereafter (Register 77, No. 15). For prior history, see Register 10, No. 8.

§ 193. Formula Rating.

In any examination, the appraisal of education and experience of the competitors may be made by formula applied to the information and data given on their official applications. Such appraisal may be made without interview and without evaluating the personal qualifications of the competitors.

HISTORY

1. Amendment filed 4–15–58; effective thirtieth day thereafter (Register 58, No. 7).

§ 194. Rating by Interview.

In any examination the education, experience, and personal qualifications of competitors may be rated after a qualifications appraisal interview and such investigations as may be necessary.

The interview shall be conducted and the ratings made either by a qualifications appraisal panel of two or more members or by a single representative of the State Personnel Board. The representative of the State Personnel Board, either when acting alone or as a member of a panel, may be other than a staff member of the State Personnel Board. The executive officer shall determine the number of interviewers required to conduct each qualifications appraisal interview and shall select and appoint such interviewers.

HISTORY

1. Repealer of former Section 194 filed 4–15–58; effective thirtieth day thereafter. For history of former Section 194, see Register 56, No. 12. Former Section 195 renumbered 194 and amendment filed 4–15–58; effective thirtieth day thereafter (Register 58, No. 7).
2. Amendment filed 2–9–60; effective thirtieth day thereafter (Register 60, No. 4).

§ 195. Conduct of Interviews.

Qualifications appraisal interviews for an examination shall be conducted by the same interviewer or qualifications appraisal panel, except that if the executive officer finds that the needs of the state service require or it is necessary in order to fill urgent and immediate vacancies in the state service the executive officer may appoint more than one interviewer or qualifications appraisal panel to conduct interviews simultaneously or in different locations. If one or more of the members of the qualifications appraisal panel is not present during all or part of the proceedings the panel may nevertheless proceed. The executive officer or chairperson may fill any vacancy by appointment of a qualified person.

HISTORY

1. New section filed 4–15–58; effective thirtieth day thereafter. Former section renumbered 194 (Register 58, No. 7).
2. Amendment filed 2–9–60; effective thirtieth day thereafter (Register 60, No. 4).
3. Amendment filed 4–8–77; effective thirtieth day thereafter (Register 77, No. 15).

§ 196. Composition of Panels.

Each qualifications appraisal panel shall include a representative of the State Personnel Board who shall be the chairman and, except when the executive officer finds that the State's interest will not benefit therefrom:

(a) One or more persons within the state service, preferably from the agency or agencies for which the employment list is being established, who are familiar with the job requirements of the class for which the examination is being held; and

(b) One or more citizens not in the state service.

HISTORY

1. Amendment filed 12–23–47; effective thirtieth day thereafter (Register 10, No. 8).
2. Amendment filed 9–11–50; effective thirtieth day thereafter (Register 21, No. 6).
3. Repealer and new section filed 4–15–58; effective thirtieth day thereafter (Register 58, No. 7).
4. Amendment filed 2–9–60; effective thirtieth day thereafter (Register 60, No. 4).

§ 197. Prohibited Membership.

No member of the State Personnel Board may serve as a member of any qualifications appraisal panel unless that board member is the appointing power or a member of the governing body of the agency for the use of which the resulting employment list is to be established, and then only upon previous approval by the State Personnel Board.

HISTORY

1. Amendment filed 12–23–47; effective thirtieth day thereafter (Register 10, No. 8).
2. Amendment filed 2–9–60; effective thirtieth day thereafter (Register 60, No. 4).
3. Amendment filed 4–8–77; effective thirtieth day thereafter (Register 77, No. 15).

§ 197.5. Disqualification of Interviewer, Rater or Administrator Related to Competitor.

When, in the course of an examination:

(a) A competitor appears before an oral examination panel, and that competitor is related by blood, or by adoption, or is or was related by marriage or is or was a cohabitant with any interviewer, it shall be the duty of the interviewer to disqualify him/herself from the interview with that particular competitor and shall not be present during the interview, or during any discussion about, or rating of, the competitor. The absence of the interviewer shall be recorded on the rating sheet of the competitor. The interview may proceed with a single interviewer. If the chairperson is disqualified from interviewing a particular competitor the chairperson shall designate a remaining panel member as the State Personnel Board representative for the interview, discussion, and rating of that competitor if the designated chairperson is a board certified chairperson.

(b) Anyone directly involved in the development or administration of any phase of an examination and a competitor are related by blood, or by adoption, or are, or were related by marriage or are or were cohabitants:

(1) The rater shall disqualify him/herself from rating the applicant, or

(2) shall not participate in any phase of the administration of that particular examination.

(c) For purposes of this rule a cohabitant is a person who shares a residence with another person.

NOTE: Authority cited: Section 18701, Government Code. Reference: Section 18930, Government Code.

HISTORY

1. New section filed 7–10–56; effective thirtieth day thereafter (Register 56, No. 13).
2. Amendment filed 4–15–58; effective thirtieth day thereafter (Register 58, No. 7).
3. Amendment of NOTE filed 4–8–77; effective thirtieth day thereafter (Register 77, No. 15).

4. Amendment file 3–9–87; effective thirtieth day thereafter (Register 87, No. 11).

§ 198. Competitive Ratings.

Ratings of education, experience, and personal qualifications shall be made on a competitive basis in that each competitor shall be rated thereon in relation to the minimum qualifications for the class in question and in relation to the comparable qualifications of other competitors. The term "personal qualifications" includes all such personality traits and personal, moral, and physical characteristics as are necessarily comprehended by the minimum qualifications established for the class. When rating competitor's education and experience, interviewers shall consider the quality, length, and pertinence of such education and experience, and the degree to which competitor's total education and work histories represent suitable preparation for the work of the class.

HISTORY

1. Amendment filed 4–15–58; effective thirtieth day thereafter (Register 58, No. 7).

§ 199. Minimum Qualifying Ratings.

In qualifications appraisal interviews, ratings accorded competitors shall all be expressed in percentages, with 70 percent being the minimum qualifying rating, or shall all be expressed as qualified or eliminated without the assignment of percentage ratings. For each examination the executive officer shall determine whether percentage ratings or ratings of qualified or eliminated shall be used. Ratings shall be made independently by each interviewer either before or after discussion with other interviewers if there is a panel interviewing the candidate. Ratings shall be made on forms prescribed by the executive officer, which shall be signed by the interviewer.

A competitor shall be eliminated only if a majority of the members of the qualifications appraisal panel assign the competitor ratings below 70 percent or ratings of "eliminated."

When the ratings are expressed in percentages, the ratings of the several members of a qualifications appraisal panel shall be averaged to determine each competitor's final rating on education, experience, and personal qualifications, except that, if the average rating is below 70 percent but there is not a majority of the members who assign ratings below 70 percent, the competitor shall be given a rating of 70 percent, and except that, if a majority of the members assign a rating below 70 percent, the competitor shall be eliminated regardless of the fact that competitor's average rating may be 70 percent or more.

NOTE: Reference: Sections 18930 and 18936, Government Code.

HISTORY

1. Amendment of section and NOTE filed 4–8–77; effective thirtieth day thereafter (Register 77, No. 15). For prior history, see Register 64, No. 15.

§ 199.1. Alternate Ratings.

When the only reason for the elimination of a competitor by an oral interview panel is the competitor's failure to possess the minimum education or experience qualifications established for the class or possession of required licenses or certificates, the panel shall, in addition to the procedure described in Section 199, make an alternate rating as though the candidate possessed such qualifications, which rating shall be not less than 70 percent. If the competitor appeals the elimination and the board grants that appeal, the competitor's rating shall be the alternate rating. The alternate rating assigned under the provisions of this section is confidential and may not be revealed to the competitor or the board until the board grants an appeal and orders that the alternate rating be used.

NOTE: Authority cited: Section 18930, Government Code. Reference: Section 18930, Government Code.

HISTORY

1. New section filed 11–21–61; effective thirtieth day thereafter (Register 61, No. 23).
2. Amendment of section and NOTE filed 4–8–77; effective thirtieth day thereafter (Register 77, No. 15).
3. Amendment filed 10–9–85; effective thirtieth day thereafter (Register 85, No. 42).
4. Change without regulatory effect amending section filed 9–16–92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 39).

§ 200. Reports on Promotional Competitors.

In any promotional examination, the executive officer may establish procedures for furnishing qualifications appraisal interviewers with reports concerning the performance of competitors.

HISTORY

1. Repealer and new section filed 4–15–58; effective thirtieth day thereafter (Register 58, No. 7).
2. Amendment filed 2–9–60; effective thirtieth day thereafter (Register 60, No. 4).
3. Amendment filed 4–26–60; effective thirtieth day thereafter (Register 60, No. 10).

§ 201. Special Inquiry.

In any examination, the executive officer may make special inquiry into the past records of competitors and shall disqualify any whose records or reputations shall in the executive officer's judgment warrant such action.

NOTE: Reference: Sections 18930 and 18935, Government Code.

HISTORY

1. Amendment filed 11–23–59; effective thirtieth day thereafter (Register 59, No. 20).
2. Amendment of section and NOTE filed 4–8–77; effective thirtieth day thereafter (Register 77, No. 15).

§ 202. Appeal from Qualifications Appraisal Panel.

(a) In examinations with two or more weighted portions, within 30 days after the notice of the result of the examination has been mailed, a competitor disqualified by a qualifications appraisal panel may appeal to the State Personnel Board to review that competitor's rating on the grounds that it was the result of failure to follow prescribed rating standards or procedures, or of erroneous interpretation or application of the minimum qualifications prescribed for the class, or that it was the result of fraud, or of discrimination within the meaning of Sections 19702 or 19703 of the Government Code, or of other improper acts or circumstances. The appeal shall be in writing and shall state the facts, information, or circumstances upon which the appeal is based.

(b) In considering an appeal filed under subsection (a), the board shall:

(1) Sustain the rating; or,

(2) Grant the appeal and give a rating of 70 percent on education, experience, and personal qualifications; or,

(3) If it determines that the rating was the result of fraud, or of discrimination within the meaning of Sections 19702 or 19703 of the Government Code, give the competitor such passing rating as it may decide, or cancel part or all of the interview ratings given by that panel, arrange for reexamination of the appellant and other affected competitors by a different panel, and withhold part or all of the eligible list from certification until the reexamination is completed; or,

(4) Where it finds the existence of extraordinary circumstances in the conduct of the interview that it determines warrants referral of the request for review of the rating either to the original or to a new qualifications appraisal panel, it may make this referral with such instructions as it deems appropriate for reconsideration of the competitor's rating. On completion of such reconsideration, the qualifications appraisal panel either shall recommend that the rating be sustained or shall recommend a revised rating for the competitor. Following such recommendation, the Board may sustain the original rating or it may give the competitor a rating of 70 percent or the revised rating recommended by the qualifications appraisal panel.

(c) In examinations where the qualifications appraisal panel is the only weighted portion, within 30 days after the notice of the result of the examination has been mailed, a competitor who received a rating below the rating required for placement on the list may appeal to the State Personnel Board to review that rating on the grounds that it was the result of failure to follow prescribed rating standards or procedures, or of erroneous interpretation or application of the minimum qualifications prescribed for the class, or that it was the result of fraud, or of discrimination within the meaning of Sections 19702 or 19703 of the Government Code, or of other improper acts or circumstances. The appeal shall be in writing and shall

state the facts, information, or circumstances upon which the appeal is based.

(d) In considering an appeal filed under subsection (c), the board shall:

(1) Sustain the rating; or,

(2) Grant the appeal and give a rating equal to that of the lowest eligible on the list; or,

(3) If it determines that the rating was the result of fraud, or of discrimination within the meaning of Sections 19702 or 19703 of the Government Code, give the competitor such passing rating as it may decide, or cancel part or all of the interview ratings given by that panel, arrange for reexamination of the appellant and other affected competitors by a different panel, and withhold part or all of the eligible list from certification until the reexamination is completed; or,

(4) Where it finds the existence of extraordinary circumstances in the conduct of the interview that it determines warrant referral of the request for review of the rating either to the original or to a new qualifications appraisal panel, it may make this referral with such instructions as it deems appropriate for reconsideration of the competitor's rating. On completion of such reconsideration, the qualifications appraisal panel either shall recommend that the rating be sustained or shall recommend a revised rating for the competitor. Following such recommendation, the board may sustain the original rating or it may give the competitor a rating equal to that of the lowest eligible on the list or the revised rating recommended by the qualifications appraisal panel.

NOTE: Reference: Section 18930, Government Code.

HISTORY

1. Amendment filed 11-16-70; effective thirtieth day thereafter (Register 70, No. 47). For prior history, see Register 65, No. 24.
2. Amendment filed 4-28-76; effective thirtieth day thereafter (Register 76, No. 18).
3. Amendment of section and NOTE filed 4-8-77; effective thirtieth day thereafter (Register 77, No. 15).
4. Change without regulatory affect amending subsections (b), (d) and (d)(4) filed 9-16-92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 39).

§ 203. Employee Development Appraisal.

In promotional examinations, the development and fitness of a competitor for performance of the duties of the promotional class may be rated through a process known as Employee Development Appraisal. Whenever this process is used, appraisal reports on each competitor shall be made by persons who know the competitor's work and development. A review committee shall be appointed by the executive officer. The review committee shall review all appraisal reports to insure uniform application of standards and completeness and accuracy of information. The review committee shall, after its review, determine a single rating for each competitor and transmit this rating to the executive officer. The executive officer shall establish all procedures and standards necessary to carry out the purpose of this rule.

HISTORY

1. New Sections 203 through 203.6 filed 5-14-57; effective thirtieth day thereafter (Register 57, No. 8).
2. Amendment filed 5-11-59; effective thirtieth day thereafter (Register 59, No. 8).
3. Amendment filed 12-26-74; effective thirtieth day thereafter (Register 74, No. 52).
4. Amendment filed 4-8-77; effective thirtieth day thereafter (Register 77, No. 15).

§ 203.1. Announcement to Employees.

In filing a request to the executive officer, for the use of employee development appraisal in a departmental or subdivisional promotional examination, an appointing authority shall indicate that an announcement of intent has been made to the employees.

HISTORY

1. Amendment filed 6-19-59; effective thirtieth day thereafter (Register 59, No. 10).
2. Amendment and repealer of NOTE filed 4-8-77; effective thirtieth day thereafter (Register 77, No. 15).

§ 203.2. Competitive Ratings.

Employee development appraisal shall be made on a competitive basis in that each competitor shall be rated on the probability of satisfactory performance in the promotional class and in relation to the probability of satisfactory performance by the other competitors.

HISTORY

1. Amendment filed 4-8-77; effective thirtieth day thereafter (Register 77, No. 15).

§ 203.3. Minimum Qualifying Rating.

Ratings shall be expressed in percentages with 70 percent being the minimum qualifying rating.

§ 203.4. Classes to Which Applicable.

Employee development appraisal shall not be used in examinations for promotion to classes with a maximum salary of less than $530 a month.

§ 203.5. Appeal from Employee Development Appraisal Rating.

(a) In examinations with two or more weighted portions, within 30 days after the notice of the result of the examination has been mailed, a competitor whose employee development appraisal rating was not qualifying may request a revision of that rating on the grounds that it was the result of failure to follow the prescribed rating standards or procedures, or of erroneous interpretation or application of minimum qualifications prescribed for the class, or that it was the result of fraud, or of discrimination within the meaning of Sections 19702 or 19703 of the Government Code, or of other improper acts or circumstances. The request shall be in writing and shall state the facts, information, or circumstances upon which the request is based.

(b) In considering an appeal filed under subsection (a), the Board shall:

(1) Sustain the rating; or,

(2) Grant the appeal and give a rating of 70 percent; or,

(3) If it determines that the rating was the result of fraud, or of discrimination within the meaning of Sections 19702 or 19703 of the Government Code, give the competitor such passing rating as it may decide, or cancel part or all of the ratings given, arrange for reexamination of the appellant and other affected competitors, and withhold part or all of the eligible list from certification until the reexamination is completed; or,

(4) Where it finds the existence of extraordinary circumstances in the conduct of the employee development appraisal process that it determines warrant referral of the request for review of the rating either to the original or to a new employee development appraisal rating committee, it may make this referral with such instructions as it deems appropriate for reconsideration of the competitor's rating. On completion of such reconsideration, the rating committee either shall recommend that the rating be sustained or shall recommend a revised rating for the competitor. Following such recommendation, the Board may sustain the original rating or it may give the competitor a rating of 70% or the revised rating recommended by the employee development appraisal rating committee.

(c) In examinations where the employee development appraisal rating is the only weighted portion of an examination, within 30 days after the notice of the result of the examination has been mailed, a competitor whose employee development appraisal rating was below that of the lowest eligible on the list may request a revision of that rating on the grounds that it was the result of failure to follow the prescribed rating standards or procedures, or of erroneous interpretation or application of minimum qualifications prescribed for the class, or that it was the result of fraud, or of discrimination within the meaning of Sections 19702 or 19703 of the Government Code, or of other improper acts or circumstances. The request shall be in writing and shall state the facts, information, or circumstances upon which the request is based.

(d) In considering an appeal filed under subsection (c), the Board shall:

(1) Sustain the rating; or,

(2) Grant the appeal and give a rating equal to that of the lowest eligible on the list; or,

(3) If it determines that the rating was the result of fraud, or of discrimination within the meaning of Sections 19702 or 19703 of the Government Code, give the competitor such passing rating as it may decide, or cancel part or all of the ratings given, arrange for reexamination of the appellant and other affected competitors, and withhold part or all of the eligible list from certification until the reexamination is completed; or,

(4) Where it finds the existence of extraordinary circumstances in the conduct of the employee development appraisal process that it determines warrant referral of the request for review of the rating either to the original or to a new employee development appraisal rating committee, it may make this referral with such instructions as it deems appropriate for reconsideration of the competitor's rating. On completion of such reconsideration, the rating committee either shall recommend that the rating be sustained or shall recommend a revised rating for the competitor. Following such recommendation, the Board may sustain the original rating or it may give the competitor a rating equal to that of the lowest eligible on the list or the revised rating recommended by the employee development appraisal rating committee.

NOTE: Reference Section 18930, Government Code.

HISTORY

1. Amendment of section and NOTE filed 4–8–77; effective thirtieth day thereafter (Register 77, No. 15). For prior history, see Register 76, No. 18.

§ 203.6. Limitation.

HISTORY

1. Repealer filed 5–11–59; effective thirtieth day thereafter (Register 59, No. 8).

§ 203.7. Composition of Employee Development Appraisal Review Committee.

Each employee development appraisal review committee shall include a representative of the State Personnel Board who is the chairperson and two or more additional persons from within state service. These committee members will be from the agency or agencies for which the employment list is being established and will be familiar with the job requirements of the class for which the examination is being held. If, however, the executive officer determines that the interests of the state would be better served in an individual examination by having only one state service representative or by adding an additional committee member from outside state service, the executive officer may modify the composition of the committee accordingly.

NOTE: Reference Section 18930, Government Code.

HISTORY

1. New section filed 12–26–74; effective thirtieth day thereafter (Register 74, No. 52).
2. Amendment of section and NOTE filed 4–8–77; effective thirtieth day thereafter (Register 77, No. 15).

§ 205. Computing Examination Score.

All percentage ratings derived from the various parts of an examination shall be rounded to the second decimal place and considered accurate to that degree for the purpose of computing examination scores. Wherever minimum ratings are specified in these rules, they shall be considered binding to the second decimal place; that is, "70 percent" shall imply 70.00 percent, and "85 percent" shall imply 85.00 percent.

The weights assigned to the various parts of an examination represent the relative value of each part in the whole examination. The method of obtaining the average percentage of the examination is as follows: Multiply the rating obtained in each part by the relative weight of that part, add the products, and divide the sum of the products by the sum of the relative weights. The quotient thus obtained will be the average percentage for the examination. For the purpose of establishing employment lists, this average percentage shall be: (1) rounded to the second decimal place for examinations in which certification from the resulting employment list will be on the basis of the three highest names under Government Code Section 19057; or (2) rounded to the nearest whole number for examinations in which certification from the resulting employment list will be on the basis of the three highest ranks under Government Code Sections 19057.1, 19057.2 and 19057.3.

In an examination for a class in which certification of eligibles is on the basis of the three highest ranks, the ranking of eligibles on the resulting employment list shall be on the basis of scores rounded to the nearest whole percentage number. Upon request of an appointing power, the executive officer shall also provide an informational listing of the competitors' average percentage scores rounded to the second decimal place.

NOTE: Reference: Sections 18936, 19057, 19057.1, 19057.2 and 19057.3, Government Code.

HISTORY

1. Amendment filed 11–6–70 as an emergency; designated effective 11–23–70. Certificate of Compliance included (Register 70, No. 45). For prior history, see Register 58, No. 20.
2. Amendment of NOTE filed 4–8–77; effective thirtieth day thereafter (Register 77, No. 15).
3. Change without regulatory effect amending section and NOTE filed 9–16–92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 39).

§ 206. Minimum Rating Required.

Competitors shall be required to attain a score of not less than 70 percent in each part of the examination and a general average score of not less than 70 percent in order to qualify in an examination; except that, in a promotional examination, it is within the discretion of the executive officer to require a higher general minimum average, which minimum shall in no case exceed 85 percent. In written tests, the 70 percent used to represent the minimum score need not be the arithmetic 70 percent of the total possible score but may be an adjusted score based on a consideration of the difficulty of the test, the quality of the competition, and the needs of the service. Any such adjusted score shall be established before the identification of the competitors' examination papers.

NOTE: Reference: Sections 18936 and 18937, Government Code.

HISTORY

1. New NOTE filed 4–8–77; effective thirtieth day thereafter (Register 77, No. 15).

§ 207. Qualifying for Lower Class.

When an examination is held for any given class and if there is also being held an examination for a lower class in the same series, it shall be within the discretion of the executive officer to pass a competitor for a place on the eligible list for the lower class if the competitor attains a passing score for the examination for the lower class but does not receive a passing score in the examination for the higher class in which he/she is competing.

NOTE: Authority cited: Section 18701, Government Code. Reference: Section 18930, Government Code.

HISTORY

1. Amendment filed 4–8–77; effective thirtieth day thereafter (Register 77, No. 15).
2. Amendment filed 3–9–87; effective thirtieth day thereafter (Register 87, No. 11).

§ 208. Medical or Physical Requirements.

HISTORY

1. Repealer filed 12–23–47 (Register 10, No. 8).

§ 209. Notice of Examination Result.

As soon as the scoring of an examination has been completed and the eligible list established, each competitor shall be notified in writing of the results of this examination. If the competitor is successful, this notice shall include the competitor's general average percentage and relative position upon the resulting employment list except when lists are merged under a program of continuous testing.

NOTE: Reference: Sections 18575 and 18939, Government Code.

HISTORY

1. Amendment filed 3–9–59; effective thirtieth day thereafter (Register 59, No. 5).
2. Amendment of section and NOTE filed 4–8–77; effective thirtieth day thereafter (Register 77, No. 15).

§ 210. Establishing List in Case of Tie.

In an examination in which certification from the resulting employment list is on the basis of the three highest names, two or more competitors receiving the same percentage rating shall be placed on the list according to their respective percentage ratings attained in the chief

essential of the examination; except that, if one of such competitors is a veteran, that competitor shall be given the preference if the examination is one in which veterans preference is granted. If the tie continues it shall be broken by lot.

NOTE: Reference: Sections 18973, 19057 and 19057.1, Government Code.

HISTORY

1. Amendment filed 11–6–70 as an emergency; designated effective 11–23–70. Certificate of Compliance included (Register 70, No. 45).
2. Amendment of section and NOTE filed 4–8–77; effective thirtieth day thereafter (Register 77, No. 15).

§ 211. Eligibility.

If an employee is dismissed from state employment by adverse action or as a result of disciplinary proceedings, that dismissed employee shall not thereafter be permitted to take any state civil service examination or be certified from an eligible list to any position in the state service without the prior consent of the Executive Officer.

Dismissed employees' requests to participate in state civil service examinations shall be subject to the following:

(a) Requests must be filed with the Board at least five (5) working days prior to the final filing date of the examination(s) for which the dismissed employee wishes to apply.

(b) All requests shall be in writing and accompanied by a completed state examination application.

(c) Requests shall clearly identify the facts, circumstances, and reasons that support the dismissed employee's request to take the examination(s). The request, at a minimum, shall include the date of the dismissal, the reasons for the dismissal, and the reasons why the dismissed employee believes that he or she should be permitted to take the examination(s). The dismissed employee may also submit substantiation of corrected behavior, letters of recommendation, employment evaluations, and other materials and/or declarations to support the request.

(d) Requests will be reviewed on a case–by–case basis, taking into consideration the following factors:

1. The type of examination/classification for which the dismissed employee wishes to apply.
2. The circumstances/causes surrounding the dismissal and any restrictions that impact the request.
3. Any pattern of successful employment after the dismissal.
4. Confirmation/assurance of corrected and/or sustained improved behavior.
5. Acceptance of responsibility for past wrongful actions.
6. Demonstration of readiness to re–enter state service.
7. Information, in writing, from the dismissing department responding to the dismissed employee's request to participate in the examination(s).
8. Any other factor deemed relevant to the request, including those factors set forth in Government Code Section 18935.

No later than 30 days after receipt of the request, the Executive Officer shall determine whether to grant the dismissed employee permission to participate in the examination(s). If the Executive Officer determines that additional time is necessary in order to obtain relevant information he or she may extend the time for determination and notify the dismissed employee of the extension and the reasons therefor. If the Executive Officer determines that the information submitted by the dismissed employee so warrants, the Executive Officer may grant the dismissed employee a blanket waiver to apply for any examination for which the dismissed employee meets the minimum qualifications. The Executive Officer shall set forth his or her decision in writing. A dismissed employee may appeal to the Board from the Executive Officer's decision within 30 days after receipt of that decision.

NOTE: Authority cited: Sections 18211, 18213 and 18701, Government Code. Reference: Sections 18935 and 18941, Government Code.

HISTORY

1. Amendment of section and NOTE filed 4–8–77; effective thirtieth day thereafter (Register 77, No. 15). For prior history, see Register 76, No. 25.
2. Change without regulatory effect amending section filed 11–26–90 pursuant to section 100, title 1, California Code of Regulations (Register 91, No. 2).
3. Amendment of section and NOTE filed 2–24–2005; operative 2–24–2005. Submitted to OAL for printing only pursuant to Government Code sections 18211 and 18213 (Register 2005, No. 8).

§ 211.1. Limitations on Administrative Hearing or Medical Interpreter Certification for Non–Citizens.

(a) All eligibility requirements contained herein shall be applied without regard to the race, creed, color, gender, religion, disability or national origin of the individual applying for the public benefit.

(b) Pursuant to Section 411 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, (Pub. L. No. 104–193 (PRWORA)), (8 U.S.C. § 1621), and notwithstanding any other provision of this division, aliens who are not qualified aliens, nonimmigrant aliens under the Immigration and Nationality Act (INA) (8 U.S.C. § 1101 *et seq.*), or aliens paroled into the United States under Section 212(d)(5) of the INA (8 U.S.C. § 1182(d)(5)), for less than one year, are not eligible to receive Administrative Hearing or Medical Interpreter Certification as set forth in Government Code Section 11435.30 and 11435.35.

(c) A qualified alien is an alien who, at the time he or she applies for or renews certification, is, under Section 431(b) of the PWRORA (8 U.S.C. § 1641(b)), any of the following:

(1) An alien lawfully admitted for permanent residence under the INA (8 U.S.C. § 1101 *et seq.*).

(2) An alien who is granted asylum under Section 208 if the INA (8 U.S.C. § 1158).

(3) A refugee who is admitted to the United States under Section 207 of the INA (8 U.S.C. § 1157).

(4) An alien who is paroled into the United States under Section 212(d)(5) of the INA (8 U.S.C. § 1182(d)(5)) for a period of at least one year.

(5) An alien whose deportation is being withheld under Section 243(h) of the INA (8 U.S.C. § 1253(h)).

(6) An alien who is granted conditional entry pursuant to Section 203(a)(7) of the INA as in effect prior to April 1, 1980.

(7) An alien who, under Section 431(c)(1) of the PRWORA (8 U.S.C. § 1641(c)(1)), meets all of the conditions of subparagraphs (A), (B), (C), and (D) below:

(A) The alien has been battered or subjected to extreme cruelty in the United States by a spouse or a parent, or by a member of the spouse's or parent's family residing in the same household as the alien, and the spouse or parent of the alien consented to, or acquiesced in, such battery or cruelty.

(B) In the opinion of the Attorney General of the United States, which opinion is not subject to review of any court, there is a substantial connection between such battery or cruelty and the need for the benefits to be provided.

(C) The alien has been approved or has a petition pending which sets forth a prima facie case for:

(i) status as a spouse or child of a United States citizen pursuant to clause (ii), (iii), or (iv) of Section 204(a)(1)(A) of the INA (8 U.S.C. § 1154(a)(1)(A)(ii), (iii) or (iv)),

(ii) classification pursuant to clause (ii) or (iii) of Section 204(a)(1)(B) of the INA (8 U.S.C. § 1154(a)(1)(B)(ii) or (iii),

(iii) suspension of deportation and adjustment of status pursuant to Section 244(a)(3) of the INA (8 U.S.C. § 1254(a)(3)), or

(iv) status as a spouse or child of a United States citizen pursuant to clause (i) of Section 204(a)(1)(A) of the INA (8 U.S.C. § 1154(a)(1)(A)) or classification pursuant to clause (i) of Section 204(a)(1)(B) of the INA (8 U.S.C. § 1154(a)(1)(B)).

(D) For the period for which benefits are sought, the individual responsible for the battery or cruelty does not reside in the same household or family eligibility unit as the individual subjected to the battery or cruelty.

(8) An alien who, under Section 431(c)(2) of the PRWORA (8 U.S.C. § 1641(c)(2)), meets all of the conditions of subparagraphs (A), (B), (C), (D) and (E) below:

(A) The alien has a child who has been battered or subjected to extreme cruelty in the United States by a spouse or a parent of the alien (without

the active participation of the alien in the battery or cruelty), or by a member of the spouse's or parent's family residing in the same household as the alien, and the spouse or parent consented or acquiesced to such battery or cruelty.

(B) The alien did not actively participate in such battery or cruelty.

(C) In the opinion of the Attorney General of the United States, which opinion is not subject to review of any court, there is a substantial connection between such battery or cruelty and the need for the benefits to be provided.

(D) The alien meets the requirements of subsection (b)(7)(c) above.

(E) For the period for which benefits are sought, the individual responsible for the battery or cruelty does not reside in the same household or family eligibility unit as the individuals subjected to the battery or cruelty.

(d) For purposes of this section, "nonimmigrant" is defined the same as in Section 101(a)(15) of the INA (8 U.S.C. § 1101(a)(15)).

(e) For purposes of establishing eligibility for the Administrative Hearing or Medical Interpreter Certification, prior to examination all of the following must be met:

(1) The applicant must declare himself or herself to be a citizen of the United States or a qualified alien under subsection (c), a nonimmigrant alien under subsection (d), or an alien paroled into the United States for less than one year under Section 212(d)(5) of the INA (8 U.S.C. § 1182(d)(5)). The alien shall declare that status through use of the "Statement of Citizenship, Alienage, and Immigration Status for State Public Benefits," SPB Form 15.

(2) The applicant must present documents of a type acceptable to the Immigration and Naturalization Service (INS) which serve as reasonable evidence of the applicant's declared status. A fee receipt from the INS for replacement of a lost, stolen, or unreadable INS document is reasonable evidence of the alien's declared status.

(3) The applicant must complete and sign SPB Form 15.

(f)(1) Pursuant to Section 434 of the PRWORA (8 U.S.C. § 1644), information regarding any applicant presenting the following documentation as reasonable evidence of the applicant's declared status under subsection (e)(2) shall be reported to the Immigration and Naturalization Service:

[The next page is 17.]

(A) The document presented indicates immigration status but does not include an alien registration or alien admission number.

(B) The document is suspected to be counterfeit or to have been altered.

(C) The document includes an alien registration number in the A60 000 000 (not yet issued) or A80 000 000 (illegal border crossing) series.

(D) The document is one of the following: an INS Form I–181b notification letter issued in connection with an INS Form I–181 Memorandum of Creation of Record of Permanent Residence, an Arrival–Departure Record (INS Form I–94) or a foreign passport stamped "PROCESSED FOR I–551, TEMPORARY EVIDENCE OF LAWFUL PERMANENT RESIDENCE" that INS issued more than one year before the date of application for the Administrative Hearing or Medical Interpreter Certification.

(2) Pursuant to Section 434 of the PRWORA (8 U.S.C. § 1644), where the Cooperative Personnel Services, working on behalf of the State Personnel Board, reasonably believes that an alien is unlawfully in the State based on the failure of the alien to provide reasonable evidence of the alien's declared status, after an opportunity to do so, said alien shall be reported to the Immigration and Naturalization Service.

(g) Eligibility for Administrative Hearing or Medical Interpreter Certification is established where subsections (e)(1)–(3) are satisfied. Any alien who provides documentation specified under subsection (f)(1) shall be eligible for Administrative Hearing or Medical Interpreter Certification until and unless the Cooperative Personnel Services, working on behalf of the State Personnel Board, receives written confirmation from the Immigration and Naturalization Service that the alien is not eligible for Administrative Hearing or Medical Interpreter Certification.

(h) Any applicant who is denied eligibility to take the examination for Administrative Hearing or Medical Interpreter Certification under this Section is entitled to file an appeal with the State Personnel Board within 30 days after service of the denial notice on the candidate. The appeal must be in writing and must contain arguments and materials that support the applicant's appeal. The State Personnel Board may chose either an investigatory or evidentiary hearing to resolve the appeal. The State Personnel Board shall make the final decision on the appeal.

NOTE: Authority cited: Section 18701, Government Code. Reference: 8 U.S.C. §§ 1621, 1641 and 1642; Sections 11435.0 and 11435.35, Government Code; and Section 51.2 , CCR.

HISTORY

1. New section filed 9–29–97; operative 9–29–97. Submitted to OAL for printing only (Register 97, No. 40).

§ 212. Use of Out–of–Class Experience in Meeting Minimum Qualifications for an Examination.

(a) Definition—Out–of–class experience is that work experience gained by the performance of duties outside the class concept of the employee's class of appointment.

Nothing in this part shall be deemed to condone or encourage the assignment by management or the performance of out–of–class work by an employee not authorized by law.

(b) Verification of out–of–class experience. An employee shall be eligible to receive credit for out–of–class experience in meeting the minimum qualifications for a civil service examination:

(1) When all of the following criteria are met:

(A) The employee shall submit a written request that the appointing authority, or his/her designee, certify that the employee accepted and performed duties assigned by the appointing authority that were not consistent with the employee's class of appointment. Requests shall not be made prior to performing out–of–class duties a minimum of 30 consecutive calendar days, nor later than one year after the ending date of the out–of–class duties.

(B) The appointing authority or his/her designee under whom the claimed out–of–class experience was gained shall document by a written statement the employee's request for certification of out–of–class experience. The department's statement shall include a description of the type and level of duties performed; a conclusion regarding whether the duties are or are not consistent with the employee's class of appointment and, if not consistent, an identification of the class to which such duties are appropriate; the beginning and ending dates of the out–of–class experience; the title of the examination for which the employee is applying, if applicable; and any further information required by the executive officer.

(C) The applicant shall attach a copy of the verification statement to the application form for any examination for which he/she is applying.

(D) The out–of–class experience shall not be used to progress from the trainee to the journey level in a class series or deep class at a rate faster than that permitted for persons appointed to such classes. If the employee's class of appointment has a transfer relationship, as defined by Section 433, to the class series or deep class in which out–of–class was gained and verified, and the out–of–class experience gained was at the trainee through journey level, the experience shall be credited for examination purposes on a cumulative basis starting at the level to which the employee could have transferred.

Where a promotional relationship, as defined in section (b) of Section 431, exists between the employee's class of appointment and the class series or deep class in which out–of–class experience is claimed and verified, the experience will be credited on a cumulative basis starting at the entry level of the class series or deep class.

For the purposes of this regulation:

A "class series" is any vertically related group of two or more classes in the same occupational specialty or program area but different in level of responsibility, which constitutes a primary promotional pattern for a specifically identifiable group of employees; and

A "deep class" is a class which has more than one salary range and where, by Board resolution, a salary range other than the lowest range of the class may be used for determining employee status.

(E) The out–of–class duties were performed for a minimum time period generally required to assume the full range of responsibilities of the class being claimed by the employee. Under this requirement, the minimum verifiable length of out–of–class experience is 30 consecutive calendar days.

(2) When an out–of–class verification for reimbursement obtained by the employee under Government Code Section 19818.16 indicates that the out–of–class experience is being verified also for the purpose of meeting the minimum qualifications for civil service examinations.

(c) Once out–of–class experience is credited under this section, such experience may be used for any other examination with a final filing date on or after the effective date of this section, without the need for reverification.

(d) All verification statements will remain on file with the department for audit purposes for a period not less than five years or until ordered destroyed by the executive officer.

(e) The employee may appeal to the board from the appointing authority's denial of a request for use of out–of–class experience for meeting minimum qualifications in an examination pursuant to Section 51.2.

NOTE: Authority cited: Sections 18701 and 19050.8, Government Code. Reference: Section 19050.8, Government Code.

HISTORY

1. New section filed 5–14–86; effective thirtieth day thereafter (Register 86, No. 20.)
2. Change without regulatory effect of subsection (b)(4) filed 12–21–88 (Register 89, No. 1).
3. Change without regulatory effect amending subsections (b)(2), (b)(4), (c) and (e) filed 9–16–92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 39).
4. Amendment of subsection (b), including newly designated subsection (b)(1), renumbering of former subsections (b)(1)–(5) to (b)(1)(A)–(E), new subsection (b)(2), and amendment of subsections (b)(1)(A)–(B) and (d) filed 2–5–96; operative 3–6–96 (Register 96, No. 6).

§ 213. Preemployment Testing for Drug Usage.

An appointing power may conduct drug testing of applicants for a class only when:

(a) The appointing power has documented the sensitivity of the class and the consequences of drug–related behavior by showing that:

(1) The duties involve a greater than normal level of trust for, responsibility for or impact on the health and safety of others, and

(2) errors in judgment, inattentiveness, or diminished coordination, dexterity or composure while performing the duties could clearly result in mistakes that would endanger the health and safety of others; and

(3) employees in these positions work with such independence that it cannot be safely assumed that mistakes such as those described in (2) could be prevented by a supervisor or another employee.

(b) The board concludes after a public hearing that the appointing power has adequately documented the sensitivity of the class and the consequences of drug–related behavior and that drug testing is, therefore, job related for the class; and

(c) As a result of (a) and (b) above, the board approves the inclusion of a requirement of drug testing in the minimum qualifications for the class.

NOTE: Authority cited: Section 18701, Government Code. Reference: Sections 18930, 18931 and 18935, Government Code.

HISTORY

1. New section filed 5–1–89; operative 5–31–89 (Register 89, No. 18).
2. Change without regulatory effect amending subsection (a)(3) filed 9–16–92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 39).

§ 213.1. Notice of Drug Testing in Examination Announcements.

Any examination that includes drug testing as provided by Section 213 shall specify in the examination announcement the type of specimen to be collected and the consequences of failing the drug test.

NOTE: Authority cited: Section 18701, Government Code. Reference: Sections 18930, 18933 and 18950, Government Code.

HISTORY

1. New section filed 5–1–89; operative 5–31–89 (Register 89, No. 18).
2. Change without regulatory effect amending section filed 9–16–92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 39).

§ 213.2. Drug Testing of Current Employees and Individuals Reinstating.

An applicant or transferee to a class for which drug testing is required pursuant to Section 213 who is a current employee or a former permanent or probationary employee with a break in service as defined in Section 6.4 shall be subject to drug testing pursuant to Section 213, except that if such employee has a current appointment to a class for which drug testing is required pursuant to Section 213, he or she shall not be tested. A current or former employee subject to testing under this section is deemed to be an applicant for purposes of Sections 213.4, 213.5, and 213.6.

NOTE: Authority cited: Sections 18071, 19050.4 and 19140, Government Code. Reference: Sections 18930 and 19996.1, Government Code.

HISTORY

1. New section filed 5–1–89; operative 5–31–89 (Register 89, No. 18).
2. Change without regulatory effect amending section filed 9–16–92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 39).

§ 213.3. Laboratories Authorized to Conduct Drug Testing.

Drug test samples shall only be analyzed by:

(a) A Commercial laboratory meeting standards that are the same as those used by the Department of Health and Human Services (DHHS)/National Institute on Drug Abuse (NIDA) to certify laboratories engaged in urine drug testing for Federal agencies (Mandatory Guidelines for Federal Workplace Drug Testing Program, Federal Register, Vol. 53, No. 69); or those standards used by the College of American Pathologists (CAP) to accredit laboratories for forensic urine drug testing (Standards for Accreditation, Forensic Urine Drug Testing Laboratories, College of American Pathologists); and

(1) is capable of same site initial screening and confirmatory tests,

(2) utilizes FDA–approved immunoassay tests, and

(3) participates in a laboratory proficiency testing program; and

(b) A laboratory which is not a component organization of a State department.

NOTE: Authority cited: Section 18701, Government Code. Reference: Section 18930, Government Code.

HISTORY

1. New section filed 5–1–89; operative 5–31–89 (Register 89, No. 18).

§ 213.4. Required Components for Drug Testing.

Any drug testing or retesting procedure conducted pursuant to Sections 213 or 213.2 must be approved by the executive officer and shall include all of the following:

(a) The drug screening methodology to be used, which shall be a type of immunoassay, except that another method may be used if a department can demonstrate that it is equally reliable as immunoassay;

(b) The drugs to be tested which shall include at least the following drugs of abuse:

(1) Amphetamines and Methamphetamines

(2) Cocaine

(3) Marijuana/Cannabinoids (THC)

(4) Opiates (narcotics)

(5) Phencyclidine (PCP)

(c) Cutoff levels for screening tests that will identify positive samples while minimizing false positive test results;

(d) An authorization to test form which shall include at least the following:

(1) A list of the specific drugs to be tested for, and a description of the consequences of failing the drug test as specified in Section 213.5;

(2) A signature block, to be signed by the applicant before the drug test begins, authorizing the test to proceed and authorizing the necessary disclosure of medical information pursuant to Section 213.4.

(3) A statement that applicants who decline to sign the form or decline to be tested will be disqualified from the examination.

(e) (1) A requirement that the applicant disclose on a form, separate from the authorization to test form, all drugs and other medications taken, whether prescribed or not, within the 14 days prior to testing. This information shall be examined only by the appointing power and only if the applicant has a positive confirmatory drug test, except that for purposes of administering Section 213.6, this information may be examined by the board and staff authorized to investigate and/or hear appeals.

(2) A requirement that the appointing power utilize a Medical Review Officer, who shall be a licensed physician with knowledge of substance abuse, to review and interpret positive results of confirmatory tests and the information submitted by the applicant pursuant to Section 213.4(e)(1), determine whether the result may have been caused for any medically acceptable reason, such as prescribed or over the counter medications, and report to the appointing power his/her opinion as to the cause of the positive drug test. In the process of making this decision, the Medical Review Officer may request the applicant to provide additional information regarding all drugs and other medications taken.

(f) Specimen chain of custody provisions which shall include at least the following:

(1) A procedure to assure that a valid specimen is acquired, the donor is properly identified, and that no tampering or mishandling of the specimen occurs from initial collection to final disposition.

(2) A written log in which is recorded the name, signature, time of receipt, and time of release of each person handling, testing or storing each specimen, or reporting test results.

(3) Collection of specimen samples in a clinical setting such as a laboratory collection station, doctor's office, hospital or clinic, or in another setting approved by the executive officer on the basis that it provides an equally secure and professional collection process.

(g) Procedure for confirmation of positive screening test results utilizing gas chromatography/mass spectrometry (GC/MS);

(h) Notices to the applicant which shall be written and based n the following:

(1) If the screening test result is negative, the test is concluded and the applicant has passed the drug test.

(2) If the necessary confirmatory test result is negative, the test is concluded and the applicant has passed the drug test.

(3) If both the screening test and the confirmatory test results are positive and the Medical Review Officer's opinion is that the positive test results are not because of prescribed or over the counter medication or for any other medically acceptable reasons, the applicant has failed the drug test.

(i) Specimen retention and retesting procedure which shall include at least the following:

(1) Retention of all confirmed positive specimens and related records by the testing laboratory in secure frozen storage for at least one year following the test or until all appeals or litigation are concluded, whichever is longer.

(2) Provisions for retesting of confirmed positive specimens by any laboratory authorized to conduct drug testing pursuant to Section 213.3, at the request of an applicant and at the applicant's expense, provided that the request is received within 30 days of notifying the applicant of his/her disqualification. Retesting shall correspond exactly with the initial testing methods and procedures.

(j) Provisions for maintaining the confidentiality of test results, which shall include at least the following:

(1) The results of any test conducted pursuant to Sections 213, 213.2 or 213.4(i)(2) shall be given only to the applicant who was tested, the appointing power or the executive officer, and cannot be revealed to any other party without the written authorization of the applicant except that for the purposes of administering (A) Section 213.5, the executive officer shall reveal a failed drug test to other State appointing powers who administer an examination for which drug testing is required and for which the individual is an applicant; or (B) Section 213.6, the executive officer may reveal a failed drug test and other relevant information to the board and staff authorized to investigate and/or hear appeals.

(2) The results of any test conducted pursuant to Section 213.2 shall not be used in any adverse action proceedings.

(3) The information disclosed by the applicant pursuant to Section 213.4(e)(1) shall be examined only the appointing power and only if the applicant has a positive confirmatory drug test, except that for purposes of administering Section 213.6, this information may be examined by the board and staff authorized to investigate and/or hear appeals.

(4) Drug test results which are positive shall be purged from all records one year from the date the drug test specimen is given except as follows:

(A) The retention period for drug test results which are positive for a drug as specified in Section 213.5(b) shall be ten years from the date the drug test specimen is given;

(B) If a disqualification from an examination as the result of a positive test is appealed or litigated, the drug test results shall be retained until the appeal or litigation is resolved.

NOTE: Authority cited: Section 18701, Government Code. Reference: Section 18930, Government Code; and Section 56.20(c), Civil Code.

HISTORY

1. New section filed 5–1–89; operative 5–31–89 (Register 89, No. 18).
2. Change without regulatory effect amending opening sentence, subsections (d)(1)–(2), (e)(1)–(2), (i)(2)–(j)(3) and (j)(4)(A) filed 9–16–92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 39).

§ 213.5. Consequences of Drug Use.

(a) Applicants who fail the drug test pursuant to Section 213.4 (h), will be disqualified from the examination in which they are competing and, except as provided by Section 213.5(e), shall not be eligible to take any State civil service examination for a class for which drug testing is required until one year has elapsed from the date the drug test specimen is given.

(b) Except as provided by Section 213.5(e), applicants who fail the drug test because of a drug for which possession would constitute a felony offense under the Uniform Controlled Substances Act (Health and Safety Code, division 10, beginning at 11000) shall not be eligible to take any State civil service examination for a peace officer class until ten years have elapsed from the date the drug test specimen is given.

(c) Any applicant for a State civil service examination for a peace officer class who discloses, or whose background investigation reveals, use of a drug for which possession would constitute a felony offense under the Uniform Controlled Substances Act (Health and Safety Code, division 10, beginning at 11000) subsequent to his or her eighteenth birthday and prior to his or her twenty–third birthday, shall be disqualified from the examination in which he or she is competing until 5 years have elapsed from the date of the disclosed or revealed use of the drug; and shall not be eligible to take any State civil service examination for a peace officer class until 5 years have elapsed from the date of the disclosed or revealed use. If any such disclosed or revealed use occurred on or after the applicant's twenty–third birthday, he or she shall be disqualified from the examination in which he or she is competing until 10 years have elapsed from the date of the disclosed or revealed use of the drug; and shall not be eligible to take any State civil service examination for a peace officer class until 10 years have elapsed from the date of the disclosed or revealed use. The disqualification period shall begin on the date that the drug was used, and not on the date that the drug use was disclosed or revealed.

(d) Any applicant for a State civil service examination for a peace officer class who is disqualified from the current examination for one of the causes specified in (c) may, upon petition and with the consent of the executive officer, be permitted to compete in the current examination and, if successful, remain on the eligible list. In acting on the request, the executive officer shall consider evidence submitted by the person of rehabilitation from drug abuse and/or extenuating circumstances regarding the drug use.

(e) Any applicant who is disqualified from taking any subsequent examination as specified in this section may, upon petition and with the consent of the executive officer, be permitted to take the specified examination. In acting on the petition, the executive officer shall consider evidence submitted by the person of rehabilitation from drug abuse and/or extenuating circumstances regarding the drug use.

Persons denied permission to take a subsequent examination within the specified one–, five–, and ten–year periods may appeal in writing to the board within 30 days of notification.

NOTE: Authority cited: Section 18701, Government Code. Reference: Sections 1031, 18930 and 18935, Government Code; Sections 11000, 11007, 11054–58, 11350, 11356 and 11377 (California Uniform Controlled Substances Act), Health and Safety Code; and Federal Public Health and Welfare Code, Title 42, Chapter 126, Section 12114(b) (Americans with Disabilities Act of 1990).

HISTORY

1. New section filed 5–1–89; operative 5–31–89 (Register 89, No. 18).
2. Amendment of subsections (b) and (c) filed 3–22–90; operative 4–21–90 (Register 90, No. 15).
3. Change without regulatory effect amending section filed 9–16–92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 39).
4. Amendment of subsections (a), (b), (e) and NOTE and new subsection (d) and relettering filed 1–4–93; operative 2–3–93 (Register 93, No. 2).
5. Amendment of section heading, subsections (c)–(e) and NOTE filed 12–15–99; operative 12–15–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 51).

§ 213.6. Appeal of a Disqualification Resulting from a Failed Drug Test or Background Investigation Report.

(a) This section pertains to and outlines administrative appeal rights only. An applicant appealing under this section shall follow the procedures in Sections 51 through 54.2.

(b) An applicant disqualified as the result of failing the drug test may only appeal the disqualification on the grounds that the drug was obtained legally, or there has been a violation of test protocol or chain of custody procedures, or other irregularity that invalidates the test result. A disqualified applicant may have his/her drug test specimen retested at his/her own expense as provided in Section 213.4(i)(2) and include the results of the retesting in his/her appeal.

(c) An applicant disqualified or withheld from certification as a result of disclosure of drug use or whose background investigation reveals use of a drug pursuant to Section 213.5(c) may appeal the disqualification or the withholding from certification on any grounds allowable by law.

(d) an applicant who prevails upon appeal under this section will be restored to eligibility in the examination from which disqualified or restored to the eligible list from which withheld.

NOTE: Authority cited: Section 18701, Government Code. Reference: sections 18654, 18670, 118671, 19675 and 18930, Government Code.

HISTORY

1. New section filed 5–1–89; operative 5–31–89 (Register 89, No. 18).
2. Change without regulatory effect amending section filed 9–16–92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 39).

§ 215.00. Demonstration Project: Examination for Managerial Classifications.

NOTE: Authority cited: Section 18701, Government Code. Reference: Sections 19600 and 19607, Government Code.

HISTORY

1. New article 8 and section filed 9–12–95; operative 10–12–95 (Register 95, No. 37).
2. Renumbering of former section 215.00 to new section 549.50 filed 9–17–97; operative 9–17–97. Submitted to OAL for printing only pursuant to Government Code sections 18210, 18211 and 18213 (Register 97, No. 38).

§ 216. Demonstration Project; Health and Welfare Agency Data Center Examinations and Appointments.

NOTE: Authority cited: Section 19602, Government Code. Reference: Section 19602, Government Code.

HISTORY

1. New section filed 3–8–96; operative 3–8–96. Submitted to OAL for printing only (Register 96, No. 10).
2. Renumbering of former section 216 to new section 549.30 filed 3–10–97; operative 3–10–97. Submitted to OAL for printing only (Register 97, No.11).

§ 216.1. Health and Welfare Agency Data Center Demonstration Project Competitive Evaluations.

NOTE: Authority cited: Section 19602, Government Code. Reference: Section 19602, Government Code.

HISTORY

1. New section filed 3–8–96; operative 3–8–96. Submitted to OAL for printing only (Register 96, No. 10).
2. Renumbering of former section 216.1 to new section 549.31 filed 3–10–97; operative 3–10–97. Submitted to OAL for printing only (Register 97, No.11).

§ 216.2. Health and Welfare Agency Data Center Demonstration Project Notices of Examination Results.

NOTE: Authority cited: Section 19602, Government Code. Reference: Section 19602, Government Code.

HISTORY

1. New section filed 3–8–96; operative 3–8–96. Submitted to OAL for printing only (Register 96, No. 10).
2. Renumbering of former section 216.2 to new section 549.32 filed 3–10–97; operative 3–10–97. Submitted to OAL for printing only (Register 97, No.11).

Article 9. Promotion

For the general statutory provisions on this subject, refer to Section 18950 of the act and sections following.

§ 231. General Reference.

Promotional examinations are governed by the sections of this article and such sections in Article 8 as are applicable.

HISTORY

1. Change without regulatory effect amending section filed 9–16–92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 39).

§ 232. Examinations.

Whenever the executive officer determines that the needs of the service require, the executive officer may announce and hold promotional examinations for purposes of establishing subdivisional, departmental, multidepartmental, and servicewide promotional lists, or any combination of them.

NOTE: Reference: Section 18533, Government Code.

HISTORY

1. Amendment filed 7–13–64; effective thirtieth day thereafter (Register 64, No. 15). For prior history, see Register 13, No. 11.
2. Amendment of section and NOTE filed 4–8–77; effective thirtieth day thereafter (Register 77, No. 15).

§ 233. Eligibility.

Promotional examinations shall be limited to employees who are designated under these sections as eligible to participate.

HISTORY

1. Change without regulatory effect amending section filed 9–16–92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 39).

§ 234. Promotional Examination Eligibility.

(a) Except as otherwise provided by law or these regulations, or order of the executive officer, a current employee in an agency or subdivision designated as appropriate by the executive officer may compete in the promotional examination if the employee meets one of the following criteria:

(1) Has a permanent appointment.

(2) Has had a permanent appointment with no subsequent break in service by resignation, non–disability retirement or removal for cause.

(3) Is on temporary assignment or loan under Section 426 and has permanent civil service status in another agency.

(b) Persons employed by the legislature who meet the provisions of Government Code Section 18990 may also compete in promotional examinations.

(c) Only persons with current permanent civil service status or persons who meet the provisions of Government Code Section 18990 may compete in career executive assignment examinations.

(d) Those individuals who resign while competing in a promotional examination and who reenter state service within six months with a permanent appointment may, with concurrence of the appointing power, resume competition in the examination in progress when it is possible to do so without requiring the rescheduling of an already completed part of the examination.

NOTE: Authority cited: Section 18701, Government Code. Reference Sections 18950 and 18990, Government Code.

HISTORY

1. Amendment filed 7–3–73; effective thirtieth day thereafter (Register 73, No. 27). For prior history, see Register 60, No. 20.
2. Amendment of section and NOTE filed 4–8–77; effective thirtieth day thereafter (Register 77, No. 15).
3. Amendment filed 2–6–87; effective thirtieth day thereafter (Register 87, No. 6).
4. Change without regulatory effect amending subsections (a), (a)(3) and (d) filed 9–16–92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 39).

§ 235. Eligibility of Employees Who Have Moved to Another Agency.

An employee who has moved from one agency or subdivision to another agency or subdivision without a break in service may participate, if otherwise eligible, in the promotional examination for the agency or subdivision from which that employee moved while employed (a) under probationary status, limited–term appointment, or temporary authorization until that employee first attains permanent status in the new agency or subdivision of (b) under an exempt appointment until that employee no longer has a right to return to civil service status under Government Code Section 19141 or (c) under a training assignment conforming to the provisions of Government Code Section 19050.8 or (d) under a Career Executive Assignment.

If a promotional examination is being held for an agency or subdivision to establish an employment list for an administrative, professional or technical class, an employee of another agency or subdivision who is otherwise eligible may participate if that employee had promotional eligibility in the designated agency or subdivision at any time within three years of the date of examination and has had no subsequent break in state service by resignation, nondisability retirement or removal for cause.

The executive officer in keeping with the needs of the service may permit other employees who are otherwise eligible under these regulations

to participate in a promotional examination being held for an agency or subdivision in which the employees previously had permanent or probationary status.

NOTE: Reference: Section 18950, Government Code.

HISTORY

1. Amendment filed 11–20–70; effective thirtieth day thereafter (Register 70, No. 47). For prior history, see Register 62, No. 3.
2. Amendment of section and NOTE filed 4–8–77; effective thirtieth day thereafter (Register 77, No. 15).
3. Change without regulatory effect amending section filed 9–16–92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 39).

§ 235.2. Eligibility—Other Persons.

A person who is on a leave of absence or whose name appears on a reemployment list may participate in a promotional examination if immediately preceding leave of absence or layoff that person had appropriate civil service status for the examination as required by these regulations.

NOTE: Reference Section 18950, Government Code.

HISTORY

1. New section filed 11–25–53; effective thirtieth day thereafter (Register 53, No. 21).
2. Amendment filed 11–23–59; effective thirtieth day thereafter (Register 59, No. 20).
3. Amendment of section and NOTE filed 4–8–77; effective thirtieth day thereafter (Register 77, No. 15).
4. Change without regulatory effect amending section filed 9–16–92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 39).

§ 236. Probationers.

HISTORY

1. Amendment filed 10–11–55; effective thirtieth day thereafter (Register 55, No. 15).
2. Repealer filed 3–9–59; effective thirtieth day thereafter (Register 59, No. 5).

§ 237. Qualifications.

No employee may participate in a promotional examination unless that employee has the minimum education and experience qualifications and any license, certificate, or other evidence of fitness prescribed for the class for which the examination is given.

NOTE: Reference: Sections 18931 and 18933, Government Code.

HISTORY

1. Amendment filed 4–8–77; effective thirtieth day thereafter (Register 77, No. 15).

§ 238. Performance Report.

HISTORY

1. Repealer filed 12–8–60; effective thirtieth day thereafter. Amendment deferring effective date to 4–1–61 filed 12–16–60 as an emergency (Register 60, No. 24). For prior history see Register 26, No. 1.

§ 239. Competing Promotionally in Open Examinations.

Whenever an open examination is held, the executive officer may permit qualified employees in specified state agencies or subdivisions thereof to compete in the examination on a promotional basis.

§ 240. Effect of Resignation on Promotional List Eligibility.

An employee who resigns from State service shall relinquish any promotional list eligibility. If the employee's name appears on any promotional eligible list, it shall be thereafter withheld from certification.

If, within 6 months, the employee reenters State service with a permanent appointment, the employee shall upon application again be eligible for certification, from such list or lists as apply to the employee's new status.

Nothing in this shall preclude an employee who within 6 months reenters State service with a permanent appointment under a new hiring authority from making application for transfer of eligibility under Section 154 to the appropriate promotional list or lists, if any, of the new hiring authority.

If an employee who is competing in a promotional examination resigns on or before the date the eligible list is established, that employee shall not attain any promotional eligibility from such examination unless within 6 months the employee reenters State service with a permanent appointment and is permitted to resume competition in the examination according to the provisions of Section 234.

Notwithstanding the above provisions, persons who have resigned for reasons of disability retirement shall retain their eligibility for promotion and be certifiable for the duration of the eligible list life, subject to medical approval.

NOTE: Authority cited: Section 18701, Government Code. Reference: Section 18950, Government Code.

HISTORY

1. Amendment and repealer of NOTE filed 4–8–77; effective thirtieth day thereafter (Register 77, No. 15). For prior history, see Register 74, No. 27.
2. Amendment filed 7–13–79; effective thirtieth day thereafter (Register 79, No. 28).
3. Amendment filed 2–6–87; effective thirtieth day thereafter (Register 87, No. 6).
4. Change without regulatory effect amending section filed 9–16–92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 39).

§ 241. Limitation of Promotional Lists.

(a) When an examination is to result in a promotional list the number of names to be placed on that list shall not be limited unless the announcement of the examination states:

(1) The number of names to be placed on the list originally.

(2) The length of time the list will remain in effect, unless it is exhausted sooner.

(3) The required general average score shall be 70%.

The executive officer shall increase the number of names placed on an eligible list beyond the number originally stated on the examination announcement as necessary to prevent the occurrence of inequity as the result of tied scores, and in order to permit placing on the list the name of any person who, as a result of deferred examination, correction of clerical error, or granting of appeal, attains a score at least equal to the score of a person included on the original list. The executive officer may extend the life of the list beyond the announced expiration date or the board, after a public hearing, may order the list abolished prior to that date.

(b) The executive officer may augment the names originally placed on an eligible list by one or more blocks of 10 candidates each, or all names if fewer than 10 remain, when:

(1) The original number of names will not meet the state's needs during the life of the list, and

(2) Qualified candidates can be obtained from those persons successful on the original examination but not on the original list, and

(3) Retesting is impractical for such reasons as inadequate number of new candidates, and insufficient time has elapsed for unsuccessful candidates to have improved their qualifications.

NOTE: Reference: Sections 18937 and 18950, Government Code.

HISTORY

1. Amendment filed 12–6–65; effective thirtieth day thereafter (Register 65, No. 24).
2. Amendment filed 9–7–71; effective thirtieth day thereafter (Register 71, No. 37).
3. Amendment of NOTE filed 4–8–77; effective thirtieth day thereafter (Register 77, No. 15).

§ 242. Certification to Limited Term Positions.

HISTORY

1. Repealer filed 12–24–64; effective thirtieth day thereafter (Register 64, No. 26).

Article 10. Appointments

For the general statutory provisions on this subject, refer to Section 19050 of the Act and sections following.

§ 250. Requirement That Selection Be Based on Merit and Fitness.

(a) Appointments to positions in the State civil service made from eligible lists in a manner consistent with provisions of Sections 254, 254.1, and 254.2 as related to the certification of eligibles, by way of transfer, as defined in Government Code Section 18525.3, or by way of reinstatement, as defined in Government Code Section 19140, shall be made on the basis of merit and fitness, defined exclusively as the consideration of

each individual's job–related qualifications for a position, including his/her knowledge, skills, abilities, experience, education, training, physical and mental fitness, and any other personal characteristics relative to job requirements, as determined by candidate performance in selection procedures, including, but not limited to, hiring interviews, reference checks, background checks, and/or any other procedures, which assess job–related qualifications and are designed and administered to select those individuals who best meet the selection need.

(b) Eligible lists shall be created on the basis of merit and fitness, and, as such, shall result from: recruitment strategies designed to be as broad and inclusive as necessary to best meet the selection need; and candidate performance in selection procedures that assess job–related qualifications, are competitive in nature, are designed and administered to fairly and objectively identify those candidates who meet the selection need, and result in the ranking of candidates based on their job–related qualifications.

(c) Permanent status in permanent appointments to the civil service is achieved after completion of the required probationary period, the final phase of the selection process. Assessment of employee performance during the probationary period shall be made on the basis of merit and fitness, with regard to the individual's qualifications, including his/her knowledge, skills, abilities, experience, education, training, physical and mental fitness, and any other personal characteristics relative to job requirements, and his/her job–related performance.

(d) All phases of the selection process, including recruitment and examining, eligible list creation, appointment, and completion of the civil service probationary period, shall provide for the fair and equitable treatment of applicants and employees on an equal opportunity basis without regard to political affiliation, race, color, ancestry, national origin, sex, sexual orientation, religion, disability, medical condition, age, or marital status.

(e) Nothing herein shall be construed to relieve appointing powers from the obligation to reasonably accommodate individuals with disabilities as required under the Americans with Disabilities Act, the Fair Employment and Housing Act, and the Civil Service Act.

(f) Nothing herein shall be construed so as to contravene the intent and purpose of Article VII, Section 6, of the California Constitution, which provides for the granting of preferences in state civil service to veterans and their surviving spouses.

(g) Intra–departmental job assignment transfers within the same job classification, such as assignments to different work shifts or work locations, or time base changes pursuant to Section 277 do not constitute appointments for purposes of this regulation.

NOTE: Authority cited: Sections 18211 and 18701, Government Code. Reference: Article VII, Sections 1 and 6, California Constitution; Sections 18213, 18500, 18525.3, 18900, 18930, 18950, 18951, 18971–18979, 19050, 19052, 19140, 19171, 19173 and 19702.2, Government Code.

HISTORY

1. New section filed 5–17–2004; operative 5–17–2004. Submitted to OAL for printing only pursuant to Government Code sections 18211 and 18213 (Register 2004, No. 21).

§ 251. Request for Certification.

Whenever a vacancy is to be filled under Section 19052 of the act, the appointing power shall make written request for certification unless otherwise prescribed by the executive officer. Such request shall contain the statements required by the act and shall include a statement of the salary, tenure, and location of the position. Certification shall be made by the executive officer.

NOTE: Reference: Section 19052, Government Code.

HISTORY

1. Amendment filed 2–10–59; effective thirtieth day thereafter (Register 59, No. 3).
2. Amendment of NOTE filed 4–8–77; effective thirtieth day thereafter (Register 77, No. 15).

§ 252. To Fill New Positions.

Whenever a new position is created, the appointing power shall notify the executive officer of the proposed new position and, at the same time, furnish a detailed statement of the duties and requirements of the proposed position.

§ 253. Certification to 60–Day Position.

Where the employment is for a period of 60 days or less, only the names of those eligibles who live in the vicinity of the employment need be certified.

HISTORY

1. Amendment filed 12–24–64; effective thirtieth day thereafter (Register 64, No. 26).

§ 254. Appointment Following Certification.

For a class in which the certification of eligibles is under Government Code section 19057.1 and 19057.3, the appointing power shall fill a vacancy in a class by selection from the highest three eligibles certified who are willing to accept employment under the conditions of employment specified. If the appointing power has at the same time more than one vacancy in the same class, the first and every succeeding vacancy shall be filled in like manner by selection in turn from the highest three remaining names. For a class in which the certification of eligibles is under Government Code sections 19057.1, 19057.2 and 19057.3, the appointing power shall fill a vacancy in a class by selection from the eligibles in the three highest ranks certified who are willing to accept employment under the conditions of employment specified. If the appointing power has at the same time more than one vacancy in the same class, the first and every succeeding vacancy shall be filled in like manner by selection in turn from the eligibles in the highest three remaining ranks. The provisions of this rule do not apply if the certification is from a reemployment list under Government Code Section 19056.

NOTE: Reference: Sections 19056, 19057, 19057.1, 19057.2 and 19057.3, Government Code.

HISTORY

1. Amendment filed 12–24–64; effective thirtieth day thereafter (Register 64, No. 26).
2. Amendment filed 11–7–69; effective thirtieth day thereafter (Register 69, No. 45).
3. Amendment filed 11–6–70 as an emergency; designated effective 11–23–70. Certificate of Compliance included (Register 70, No. 45).
4. Amendment of NOTE filed 4–8–77; effective thirtieth day thereafter (Register 77, No. 15).
5. Change without regulatory effect amending section and NOTE filed 9–16–92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 39).

§ 254.1. Designation of Classes as Professional, Scientific, Administrative, Management or Executive.

For the purpose of administering Section 19057.1 of the Government Code, the executive officer shall designate those classes of positions which are considered to be professional, scientific, administrative, management, or executive and meet the definition in subsections (a) or (b) below.

(a) The work performed either involves supervision of employees as a primary duty; or,

(b) The work is predominantly intellectual and varied in character and requires the consistent exercise of discretion and judgment.

NOTE: Authority cited: Section 18701, Government Code. Reference: Sections 19057.1 and 19997.3, Government Code.

HISTORY

1. New section filed 11–6–70 as an emergency; designated effective 11–23–70. Certificate of Compliance included (Register 70, No. 45).
2. Amendment filed 11–8–72; effective thirtieth day thereafter (Register 72, No. 46).
3. Amendment of NOTE filed 4–8–77; effective thirtieth day thereafter (Register 77, No. 15).
4. Editorial reprinting of text deleted in error in Register 84, Nos. 8 and 12 (Register 84, No. 15).
5. Amendment filed 8–28–85; effective thirtieth day thereafter (Register 85, No. 35).

6. Change without regulatory effect amending subsection (b) filed 9–16–92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 39).

§ 254.2. Three Rank Certification.

The number of names certified to an appointing power to fill vacancies as provided by Government Code Sections 19057.1, 19057.2 and 19057.3 shall, at the option of the appointing power, be one of the following:

(1) All eligibles in the highest three ranks; or

(2) Any specific eligible(s), identified by the appointing power, who is in one of the highest three ranks.

NOTE: Authority cited: Sections 18701, 19057.1, 19057.2 and 19057.3, Government Code. Reference: Sections 19057.1, 19057.2 and 19057.3, Government Code.

HISTORY

1. New section filed 1–19–89; operative 2–18–89 (Register 89, No. 4).
2. Change without regulatory effect pursuant to section 100, title 1, California Code of Regulations filed 5–16–90 (Register 90, No. 22).
3. Change without regulatory effect amending section and NOTE filed 9–16–92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 39).

§ 255. Certification in Case of Waiver.

HISTORY

1. Repealer filed 12–24–64; effective thirtieth day thereafter (Register 64, No. 26).

§ 256. Certification to Laborers' Positions.

HISTORY

1. Repealer filed 12–24–64; effective thirtieth day thereafter (Register 64, No. 26).

§ 257. Cancellation of Request for Certification.

HISTORY

1. Repealer filed 2–10–59; effective thirtieth day thereafter (Register 59, No. 3).

§ 258. Reply to Inquiry Following Certification.

It shall be the duty of every eligible to respond within a reasonable time to an inquiry to ascertain his interest in appointment to a position.

The following standards shall constitute reasonable response time frames:

(1) Telephone: two days' response time following the initial contact;

(2) Telegram: three days, exclusive of Saturdays, Sundays, and legal holidays, after the date the telegram is sent;

(3) Mailgram: four days, exclusive of Saturdays, Sundays, and legal holidays, after the date the mailgram is sent;

(4) Mail (in town): four days, exclusive of Saturdays, Sundays, and legal holidays, after the date the notice is sent;

(5) Mail (out of town): six days, exclusive of Saturdays, Sundays, and legal holidays, after the date the notice is sent.

If the eligible is unavailable for employment within 30 calendar days following the date of the job interview, the appointing power may consider this a waiver for the position.

NOTE: Authority cited: Section 18701, Government Code. Reference: Section 19050, Government Code.

HISTORY

1. Amendment filed 12–24–64; effective thirtieth day thereafter (Register 64, No. 26).
2. Repealer of NOTE filed 4–8–77; effective thirtieth day thereafter (Register 77, No. 15).
3. Amendment filed 7–13–79; effective thirtieth day thereafter (Register 79, No. 28).

§ 259. Failure to Respond to Telegram.

HISTORY

1. Repealer filed 12–24–64; effective thirtieth day thereafter (Register 64, No. 26). For prior history see Register 10, No. 8.

§ 260. Failure to Respond.

When the board, executive officer, or a state agency transmits to an eligible any communication concerning availability for any type of employment requiring an answer, if the eligible's response is not received within the time provided by Section 258, or if the eligible fails to appear for a job interview or for work, that eligible's name shall be placed on inactive status for the class concerned and, in the case of certification, is a waiver thereof.

NOTE: Authority cited: Section 18930, Government Code. Reference: Section 18935, Government Code.

HISTORY

1. Amendment filed 12–24–64; effective thirtieth day thereafter (Register 64, No. 26).
2. Amendment and repealer of NOTE filed 4–8–77; effective thirtieth day thereafter (Register 77, No. 15).
3. Amendment filed 10–9–85; effective thirtieth day thereafter (Register 85, No. 42).
4. Change without regulatory effect amending section filed 9–16–92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 39).

§ 261. Waiver of Certification.

The executive officer may ascertain from each eligible the salary, tenure, location, and other pertinent conditions of employment under which the eligible will accept appointment. Such statement of acceptable conditions of employment shall constitute an automatic waiver of certification to positions having other conditions of employment. The conditions of employment acceptable to an eligible may at any time be changed at that eligible's written request; but, in such event, that eligible shall not be entitled to consideration for appointment to any position for which certification has already been forwarded to the appointing power.

NOTE: Reference: Section 19057, Government Code.

HISTORY

1. Amendment filed 2–10–59; effective thirtieth day thereafter (Register 59, No. 3).
2. Amendment of section and NOTE filed 4–8–77; effective thirtieth day thereafter (Register 77, No. 15).

§ 262. Waiver of Appointment.

After three waivers of appointment to positions in any given class and under the conditions of employment acceptable to the eligible as defined in Section 261, the eligibles name shall not be certified to future vacancies for that class except in the case of a promotional or reemployment list.

NOTE: Authority cited: section 18701, Government Code. Reference: Section 18935, Government Code.

HISTORY

1. Amendment filed 12–24–64; effective thirtieth day thereafter (Register 64, No. 26). For prior history, see Register 10, No. 8.
2. Amendment of NOTE filed 4–8–77; effective thirtieth day thereafter (Register 77, No. 15).
3. Amendment filed 3–9–87; effective thirtieth day thereafter (Register 87, No. 11).
4. Change without regulatory effect amending section filed 9–16–92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 39).
5. Editorial correction of Authority cite (Register 95, No. 5).

§ 263. Appointment Substantiation.

The appointing power shall (1) immediately report each appointment to the executive officer, and (2) maintain an official employee file including the executed loyalty oath in the manner prescribed by the executive officer.

NOTE: Reference: Sections 3105 and 18153, Government Code.

HISTORY

1. Amendment filed 9–12–67; designated effective 11–8–67 (Register 67, No. 37).
2. Amendment of NOTE filed 4–8–77; effective thirtieth day thereafter (Register 77, No. 15).

§ 264. Certification from Comparable List.

If fewer than three names of persons willing to accept appointment are on the open eligible list for the class to which a position belongs and no other employment list for such class is available the executive officer may authorize certification of additional names from an employment list or lists for an appropriate class of substantially the same or a higher level.

NOTE: Reference: Section 19055, Government Code.

HISTORY

1. Amendment of NOTE filed 4–8–77; effective thirtieth day thereafter (Register 77, No. 15). For prior history, see Register 61, No. 5.

§ 265. Temporary Authorization.

If fewer than three names of persons willing to accept appointment are on the open eligible list for the class to which a position belongs and no other employment list for such class is available the executive officer may authorize the appointing authority to make a temporary appointment.

NOTE: Reference: Sections 19057 and 19058, Government Code.

HISTORY

1. New section filed 3–7–61; effective thirtieth day thereafter (Register 60, No. 5).
2. Amendment of NOTE filed 4–8–77; effective thirtieth day thereafter (Register 77, No. 15).

§ 266. Correction of Appointments.

When the executive officer determines that an appointment is unlawful, the executive officer shall determine the good faith of the appointing power and the employee under Section 8 and shall take corrective action up to and including voiding the appointment, provided that:

(a) No corrective action shall be taken on any appointment which has been in effect for one year or longer if both the appointing power and the employee acted in good faith; and

(b) No corrective action shall be taken on any appointment which has been in effect for five years or longer unless:

(1) the employee acted in other than good faith; or

(2) the executive officer determines that the rights of another employee are significantly endangered by the retention of the appointment in question.

When an unlawful appointment is terminated or corrected, the employee who acted in good faith shall retain only the compensation as defined in Section 9. In all cases, compensation shall be corrected on a prospective basis.

The employee who acted in other than good faith shall reimburse all compensation resulting from the appointment. The board in reviewing cases on appeal may, based upon the evidence, provide for less than full reimbursement of compensation.

NOTE: Authority cited: Section 18701, Government Code. Reference: Sections 19257 and 19257.5, Government Code.

HISTORY

1. New section filed 1–18–82; effective thirtieth day thereafter (Register 82, No. 4).
2. Change without regulatory effect amending opening paragraph and subsection (b)(2) filed 9–16–92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 39).

§ 266.1. Remedial Measures.

When the appointment of an employee who acted in good faith is being terminated pursuant to Section 266, the employee shall be afforded:

(1) deferred competition in examinations in which, in the judgment of the executive officer, the employee would be likely to have competed if he or she had not accepted the terminated appointment, provided that the examination is in progress or that the eligible list which resulted from the last examination for the class is still existing and valid; and

(2) placement back on the eligible list from which the employee was unlawfully appointed, provided that the eligible list still exists and is valid.

NOTE: Authority cited: Section 18701, Government Code. Reference: Section 19257.5, Government Code.

HISTORY

1. New section filed 1–18–82; effective thirtieth day thereafter (Register 82, No. 4).
2. Change without regulatory effect amending opening sentence filed 9–16–92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 39).

§ 266.2. Right to Respond.

At least fifteen days prior to the date the board plans to take corrective action on an unlawful appointment, the executive officer shall notify the employee and the employee's appointing power of the proposed action. This notice shall state the reason(s) for the proposed action and notify the employee and the appointing power of their right to respond to the notice within the fifteen days either verbally or in writing.

NOTE: Authority cited: Section 18701, Government Code. Reference: Section 18670, Government Code.

HISTORY

1. New section filed 1–18–82; effective thirtieth day thereafter (Register 82, No. 4).
2. Renumbering of former section 60 to section 266.2 filed 4–26–90; operative 5–26–90 (Register 90, No. 22).

§ 266.3. Right to Appeal.

When corrective action is taken on an unlawful appointment, the employee and the appointing power may file a written appeal with the board within 30 calendar days after the date of notification of the board's final decision to take the corrective action upon which the appeal is based.

NOTE: Authority cited: Section 18701, Government Code. Reference: Section 18670, Government Code.

HISTORY

1. New section filed 1–18–82; effective thirtieth day thereafter (Register 82, No. 4).
2. Renumbering of former section 60.1 to section 266.3 filed 4–26–90; operative 5–26–90 (Register 90, No. 22).

§ 275. Transferring into State Civil Service.

When it is necessary for the State of California to assume work previously performed by a county, city, federal department or agency or public district, the board by resolution shall permit the employees who previously performed the work to qualify in state service in their positions upon allocation of their positions to an appropriate class in the state classification plan and in accordance with standards and procedures established by the executive officer.

NOTE: Authority cited: Section 18701, Government Code. Reference: Section 19050.2, Government Code.

HISTORY

1. New section filed 10–18–79; effective thirtieth day thereafter (Register 79, No. 42). For prior history, see Registers 78, No. 44; 74, No. 36; 74, No. 18; 73, No. 51; 72, No. 42; 72, No. 32; 72, No. 28; 70, No. 42; 70, No. 27; and 70, No. 23.
2. Amendment filed 8–28–85; effective thirtieth day thereafter (Register 85, No. 35).
3. Change without regulatory effect amending section and NOTE filed 9–16–92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 39).

§ 276.2. Transferring into State Civil Service.

NOTE: Reference: Section 18709, Government Code.

HISTORY

1. New section filed 4–14–77; effective thirtieth day thereafter (Register 77, No. 16).
2. Repealer filed 10–18–79; effective thirtieth day thereafter (Register 79, No. 42).

§ 277. Change in Time Base.

The following provisions specify when employees are eligible for various time base changes without an appointment from an employment list. They are not to be construed, by themselves, as entitling employees to such changes or as enabling appointing powers to make such changes without the employee's consent. These provisions do not extend or modify an employee's eligibility to reinstate to a position in a different class:

(a) Increases in time base of part–time or intermittent employees to full time or movement of intermittent employees to part time are permitted when:

(1) The employee has previously held a permanent or probationary status appointment at or above the desired time base in the classification to which the appointment is to be made or in the classification that is substantially at or above the salary level of that classification; or,

(2) The appointing power can clearly demonstrate that the employee has previously been eligible for an appointment from an employment list to the position and time base in question; or,

(3) For at least two years the employee has held any combination of permanent or probationary appointments to the types of classes specified in subsection (1) and has worked at least 1920 hours in such appointments.

(b) Time base changes other than those specified in Part (a) of this rule are permitted at the discretion of the appointing power.

NOTE: Authority cited: Section 19062.5, Government Code. Reference: Sections 18550, 18551, 18552 and 19065 renumbered 19062.5, Government Code.

HISTORY

1. New section filed 5–9–84; effective thirtieth day thereafter (Register 84, No. 19).
2. Change without regulatory effect amending subsection (b) and NOTE filed 9–16–92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 39).

§ 279.1. Definition of a Personal Services Contract.

NOTE: Authority cited: Section 18701, Government Code. Reference: Section 19130, Government Code.

HISTORY

1. New section filed 4–17–89; operative 5–17–89 (Register 89, No. 21).
2. Change without regulatory effect renumbering former section 279.1 to section 547.59 filed 12–1–99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 49).

§ 279.2. Undercut of State's Wage in Cost–Savings Based Contracts.

NOTE: Authority cited: section 18701, Government Code. Reference: Section 19130(a)(2).

HISTORY

1. New section filed 4–17–89; operative 5–17–89 (Register 89, No. 21).
2. Change without regulatory effect amending opening paragraph and subsections (b)–(c) filed 9–16–92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 39).
3. Change without regulatory effect renumbering former section 279.2 to section 547.69 filed 12–1–99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 49).

§ 279.3. Affirmative Action Impact.

NOTE: Authority cited: Section 18701, Government Code. Reference: Sections 11135–11139.5, 19130(a)(4), 19130(a)(8), 19790, 19791, 19793 and 19797, Government Code; and Section 1431, Labor Code.

HISTORY

1. New section filed 4–17–89; operative 5–17–89 (Register 89, No. 21).
2. Change without regulatory effect amending subsection (b) filed 9–16–92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 39).
3. Change without regulatory effect renumbering former section 279.3 to section 547.70 filed 12–1–99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 49).

§ 279.4. Amount of Savings

NOTE: Authority cited: Section 18701, Government Code. Reference: Sections 19130(a)(5) and 19130(a)(6), Government Code.

HISTORY

1. New section filed 4–17–89; operative 5–17–89 (Register 89, No. 21).
2. Change without regulatory effect renumbering former section 279.4 to section 547.71 filed 12–1–99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 49).

Article 11. Limited Term Appointments

§ 281. Acquisition of Permanent Status.

No time served in a limited–term appointment may count toward acquiring permanent status in any position.

NOTE: Authority cited: Section 18701, Government Code. Reference: Sections 19080.3 and 19083, Government Code.

HISTORY

1. Amendment filed 4–8–77; effective thirtieth day thereafter (Register 77, No. 15).
2. Amendment filed 6–10–83; effective thirtieth day thereafter (Register 83, No. 24).

§ 282. Termination.

A limited–term employee may be separated at any time prior to the expiration of the term for which appointed by advising the employee either orally or in writing of the separation; provided, however, a limited–term employee may not be separated except for cause, if emergency or temporary employees in limited–term positions remain employed in the same class and the same layoff subdivision. If separated for cause, the appointing power shall give the employee, on or before the date of separation, written notice setting forth the reasons therefor. Within 30 days after the effective date of separation for cause, a copy of the notice shall be sent with the report of separation to the executive officer. The employee has no appeal from the action of the appointing power in terminating the limited–term employment except on the grounds that temporary or emergency employees remain employed in violation of this section.

The executive officer shall not again certify for limited–term employment in the same class the name of a person who has been separated for cause unless, after investigation, it is determined by the executive officer that the reason for separation should not bar the person from such further employment.

Cause as used in this rule shall include failure to demonstrate merit, efficiency, fitness, and moral responsibility.

NOTE: Reference: Section 19082, Government Code.

HISTORY

1. New section filed 1–13–48 (Register 11, No. 2).
2. Amendment filed 12–8–53; effective thirtieth day thereafter (Register 53, No. 22).
3. Amendment of section and NOTE filed 4–8–77; effective thirtieth day thereafter (Register 77, No. 15).
4. Change without regulatory effect amending opening paragraph filed 9–16–92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 39).

Article 12. Emergency Appointments

For the general statutory provisions on this subject, refer to Section 19120 of the act and sections following.

§ 300. General.

The frequency, length, and circumstances of all emergency appointments made pursuant to Government Code Section 19888.1 shall be subject to the provisions of this article. The authority to make such appointments shall be limited to that provided by Sections 302.1, 302.2 and 302.3.

NOTE: Authority cited: Section 18701, Government Code. Reference: Section 19888.1, Government Code.

HISTORY

1. New section filed 7–7–82; effective thirtieth day thereafter (Register 82, No. 28).
2. Change without regulatory effect amending section filed 9–16–92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 39).

§ 301. Procedure.

When emergency appointments are made under Government Code Section 19888.1, the appointing power shall establish and retain records consisting of the name of the appointee, the duties of the position, the reason for the appointment and such further data as may be required by the executive officer for the purpose of ensuring compliance with the provisions of this article.

NOTE: Authority cited: Section 18701, Government Code. Reference: Section 19888.1, Government Code.

HISTORY

1. Amendment filed 11–19–57; effective thirtieth day thereafter (Register 57, No. 20).
2. Amendment of NOTE filed 4–8–77; effective thirtieth day thereafter (Register 77, No. 15).
3. Amendment filed 7–7–82; effective thirtieth day thereafter (Register 82, No. 28).

§ 302. Review of Emergency Appointment.

NOTE: Reference: Section 19120, Government Code.

HISTORY

1. New section filed 11–19–57; effective thirtieth day thereafter (Register 57, No. 20).
2. Amendment of NOTE filed 4–8–77; effective thirtieth day thereafter (Register 77, No. 15).
3. Repealer filed 7–7–82; effective thirtieth day thereafter (Register 82, No. 28).

§ 302.1. Extreme Emergencies.

The appointing power, to prevent the stoppage of public business in the case of fire, flood or other extreme emergency, may make emergency

appointments subject to the provisions of Government Code Section 19888.1 and Sections 301, 303 and 304.

NOTE: Authority cited: Section 18701, Government Code. Reference: Section 19888.1, Government Code.

HISTORY

1. New section filed 7–7–82; effective thirtieth day thereafter (Register 82, No. 28).
2. Change without regulatory effect amending section filed 9–16–92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 39).

§ 302.2. Appointments for Short–Duration Work.

Subject to review by the executive officer, the appointing power may employ persons under emergency appointments for up to 30 working days for specifically identified work which:

(a) Because of its unusual urgency, nature, volume, location, duration or other special characteristics, is distinct from the range of work normally performed by the appointing power's regular staff; and

(b) Is not expected to be performed within the appointing agency for more than 30 working days within any 12–month period.

If the appointing power or the executive officer determines that the type of work performed by employees appointed under this section will last for more than 30 working days within any 12–month period, any new or extended emergency appointments to perform such work shall be subject to the provisions of Section 302.3.

NOTE: Authority cited: Section 18701, Government Code. Reference: Section 19888.1, Government Code.

HISTORY

1. New section filed 7–7–82; effective thirtieth day thereafter (Register 82, No. 28).
2. Change without regulatory effect amending subsection (b) filed 9–16–92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 39).

§ 302.3. Acting Assignments.

The executive officer may authorize appointing powers to make emergency appointments on an acting basis to established positions for 20 to 60 working days when he/she determines that:

(a) Such appointments are needed to meet a specifically identified and reasonable operating need; and

(b) The identified need could not have been feasibly met through use of other civil service or administrative alternatives; and

(c) When a state employee is to be appointed, that such employee cannot effectively meet the identified need without a substantial change in duties that would clearly result in the employee working outside the scope of his/her current classification. Reassignments that do not substantially change the overall nature of an employee's work assignment shall not be a basis for an emergency appointment under this section.

[The next page is 25.]

NOTE: Authority cited: Section 18701, Government Code. Reference: Section 19888.1, Government Code.

HISTORY

1. New section filed 7–7–82; effective thirtieth day thereafter (Register 82, No. 28).
2. Change without regulatory effect amending subsection (c) filed 9–16–92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 39).

§ 303. Duration of Employment.

No person may serve under an emergency appointment for more than 60 working days in any 12 consecutive calendar months. Service under Section 302.1 may be exempted from this limit by the executive officer.

NOTE: Authority cited: Section 18701, Government Code. Reference: Section 19888.1, Government Code.

HISTORY

1. New section filed 11–19–57; effective thirtieth day thereafter (Register 57, No. 20).
2. Amendment of NOTE filed 4–8–77; effective thirtieth day thereafter (Register 77, No. 15).
3. Amendment filed 7–7–82; effective thirtieth day thereafter (Register 82, No. 28).
4. Change without regulatory effect amending section filed 9–16–92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 39).

§ 304. Reinstatement After Emergency Appointment.

Permanent or probationary employees who vacate positions to accept emergency appointments shall have a mandatory right of return to their former position upon the conclusion of the emergency appointment if:

(a) The emergency appointment is under the same appointing power as the position the employee is vacating; or

(b) The employee is granted paid or unpaid leave to accept the emergency appointment.

NOTE: Authority cited: Section 18701, Government Code. Reference: Section 19888.1, Government Code.

HISTORY

1. New section filed 7–7–82; effective thirtieth day thereafter (Register 82, No. 28).

Article 13. Reinstatement

For the general statutory provisions on this subject, refer to Section 19140 of the act and sections following.

§ 311. After Resignation.

NOTE: Authority cited: Section 18701, Government Code, Reference: Sections 19140–19144, Government Code.

HISTORY

1. Repealer filed 11–20–87; operative 12–20–87 (Register 87, No. 48).

§ 313. Demoted Employee.

HISTORY

1. Amendment filed –15–53; effective thirtieth day thereafter (Register 53, No. 16).
2. Amendment filed 7–10–56; effective thirtieth day thereafter (Register 56, No. 13).
3. Repealer filed 1–8–70 as an emergency; effective upon filing. Certificate of Compliance included (Register 70, No. 2).

Article 14. Probationary Period

For the general statutory provisions on this subject, refer to Section 19170 of the act and sections following.

§ 321. Extension of Probationary Periods.

(a) In the event a probationer has not, during a prescribed calendar length of the probationary period, worked the hours set forth below, probation will automatically be extended until the probationer has worked the required number of hours.

(1) 840 if serving a six months' probationary period; or

(2) 1260 if serving a nine months' probationary period; or

(3) 1680 if serving a one year probationary period.

Vacation, sick leave, military leave or other leave of absence, compensating time off, suspension or other separations, including separations subsequently voided or otherwise set aside, shall not be considered working time.

The board shall be notified of an extension under this section.

(b) If a probationer has had a continuous period of absence of 60 or more working days and upon return from such absence the appointing power determines that the remaining portion of the probationary period is insufficient to evaluate that probationer's current performance the appointing power may extend the probationary period with the approval of the executive officer. The length of such extension shall be determined by the length of the completed portion of the probationary period at the beginning of the probationer's absence as follows:

(1) If up to one–third of the minimum number of hours required for the probationary period was worked, the remainder of the probationary period plus the extension shall not exceed the minimum number of hours required for the original probationary period.

(2) If over one–third but not more than two–thirds of the minimum number of hours required for completion of the probationary period was worked, the remainder of the probationary period plus the extension shall not exceed two–thirds of the minimum number of hours required to complete the original probationary period.

(3) If over two–thirds of the minimum number of hours required to complete the probationary period was worked, the remainder of the probationary period plus the extension shall not exceed one–third of the minimum number of hours required to complete the original probationary period.

(c) The probationary period may be extended for a maximum of five working days in order to comply with notice requirements as set forth in Section 52.3 for rejection during probation.

(d) Pursuant to Government Code Section 19170, an appointing power and an employee, who alleges that he/she has a disability as defined in Government Code Section 12926, may submit a written agreement for approval by the board, that would extend the employee's probationary period within his/her existing classification for up to six months to provide a reasonable accommodation to the employee as follows:

(1) The agreement shall describe the period of the extension, beginning and ending dates, and how the extended probationary period will allow the employee to demonstrate, before the extended probationary period ends, the ability to satisfactorily perform the essential functions of the position with the reasonable accommodation. The written agreement must be received by the board for review prior to the end of the employee's probationary period.

(2) If the employee's probationary period will end during the board's review, the board will automatically extend the probationary period until a determination is made to approve or disapprove the agreement. This period of time is inclusive of the extension time requested by the department. If the board does not approve the agreement, the board will extend the employee's probationary period by an additional ten working days from the date of service of the board's determination, to allow the appointing power sufficient time to proceed with a rejection during probation. This ten working day extension is in addition to that provided under subsection (c) above.

(e) Prior to the completion of the probationary period, the appointing power shall notify the employee in writing that the probationary period is being extended under this rule and of the length of the extension. Employees whose probationary periods are extended under this rule must also, over the entire course of their original and extended probationary periods, meet the minimum service requirements specified in subsection (a) above. The State Personnel Board shall notify the employee and the appointing power in writing of its decision to approve or disapprove any agreement reached pursuant to subsection (d) above.

NOTE: Authority cited: Section 18701, Government Code. Reference: Sections 19170 and 19173, Government Code.

HISTORY

1. Amendment of section and NOTE filed 4–8–77; effective thirtieth day thereafter (Register 77, No. 15). For prior history, see Register 70, No. 2.

2. Amendment filed 7–28–83; effective thirtieth day thereafter (Register 83, No. 31).
3. Change without regulatory effect amending section filed 9–16–92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 39).
4. Amendment of subsection (c) and new subsections (d)–(e) filed 3–24–2003; operative 3–24–2003 pursuant to Government Code section 11343.4 (Register 2003, No. 13).

§ 321.5. Probationary Period of Reappointed, Reinstated, Demoted or Transferred Employees.

HISTORY

1. New section filed 11–7–49 (Register 18, No. 5).
2. Amendment filed 9–15–53; effective thirtieth day thereafter (Register 53, No. 16).
3. Amendment filed 10–11–61; effective thirtieth day thereafter (Register 61, No. 20).
4. Repealer filed 1–8–70 as an emergency; effective upon filing. Certificate of Compliance included (Register 70, No. 2).

§ 322. Probationary Period Requirements.

Probationary period requirements for permanent appointments from an employment list; or by reinstatement, or by transfer, or by demotion are:

(a) A new probationary period shall be required when an employee enters or is promoted in the state civil service by permanent appointment from an employment list; upon reinstatement after a break in continuity of service resulting from a permanent separation; or by reinstatement or appointment from a reemployment list, pursuant to Section 548.152 or 548.153, to a classification with a promotional relationship to the classification of the employee's former position.

(b) An employee who has not attained permanent status when accepting another appointment shall serve the remainder of that probationary period unless required to serve a new probationary period.

(c) A new probationary period shall be required unless waived by the appointing power when an employee is being appointed:

(1) Without a break in service in the same class in which the employee has completed the probationary period but under a different appointing power.

(2) Without a break in service to a class with substantially the same or lower level of duties and responsibilities and salary range as a class in which the employee has completed the probationary period.

(3) From a general reemployment list to the same class in which the employee has completed the probationary period but under a different appointing power.

(4) By reinstatement or appointment from a reemployment list, pursuant to Section 548.152 or 548.153, to a classification to which the employee could have transferred from his or her former position.

(d) A new probationary period shall not be required when an employee is being appointed:

(1) From any reemployment list under the same appointing power, except as otherwise provided in this section;

(2) By reinstatement with a right of return, except as otherwise provided in this section;

(3) Without a break in service under the same appointing power and to the same class in which the employee had completed the probationary period; or

(4) By demotion under Government Code Section 19997.8.

"Without a break in service" as used in this section is continuous service as defined in Section 6.4.

NOTE: Authority cited: Section 19170, Government Code. Reference: Sections 18527 and 19171, Government Code.

HISTORY

1. Amendment filed 1–8–70 as an emergency; effective upon filing. Certificate of Compliance included (Register 70, No. 2). For prior history, see Register 61, No. 5.
2. Amendment of section and NOTE filed 4–8–77; effective thirtieth day thereafter (Register 77, No. 15).
3. Amendment filed 5–29–84; effective thirtieth day thereafter (Register 84, No. 22).
4. Change without regulatory effect of subsection (d)(4) (Register 87, No. 14).
5. Change without regulatory effect amending subsections (a)(4), (c)(4) and (d)(4) filed 9–16–92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 39).

§ 323. Performance Appraisal of Probationers.

NOTE: Authority cited: Section 19170, Government Code. Reference: Section 19302, Government Code.

HISTORY

1. Amendment of section and NOTE filed 4–8–77; effective thirtieth day thereafter (Register 77, No. 15). For prior history, see Register 60, No. 24.
2. Repealer filed 8–28–85; effective thirtieth day thereafter (Register 85, No. 35).

§ 324. Duty to Reject Probationer.

If the conduct, capacity, moral responsibility, or integrity of the probationer is found to be unsatisfactory, it shall be the duty of the appointing power to reject that probationer from the position.

HISTORY

1. Amendment filed 4–8–77; effective thirtieth day thereafter (Register 77, No. 15).

§ 325. Duty to Report Delinquencies.

If, during the probationary period of any state employee, there is presented to the executive officer convincing evidence that the moral conduct, character, or integrity of the employee is unsatisfactory, the executive officer shall present such evidence to the appointing power.

§ 326. Restoration to Eligible List.

If after investigation the board or the executive officer determines that the probationer's name should be restored to the eligible list under Section 19175(b) of the act, the name shall be restored to the eligible list from which the probationer was certified if such list is still in existence. If the probationer's name is restored to the eligible list, it shall be placed thereon in accordance with the probationer's score in the examination from which such list resulted.

HISTORY

1. Amendment filed 11–7–49 (Register 18, No. 5).
2. Repealer of NOTE filed 4–8–77; effective thirtieth day thereafter (Register 77, No. 15).

§ 327. Cancellation or Withdrawal of Notice of Rejection.

The appointing power may cancel or withdraw a notice of rejection of a probationer in the following manner and not otherwise: (a) by filing with the board on or prior to the thirtieth calendar day after the effective date of rejection, a written notice of cancellation or withdrawal setting forth the reasons therefor, and (b) by obtaining the concurrence of the executive officer to such cancellation or withdrawal prior to such filing.

An employee whose probationary rejection is canceled or withdrawn shall, for such time as the executive officer determines is necessary to prevent injustice to the employee, be entitled to payment of salary less legal offsets, if any, and to credit for seniority, sick leave, vacation, and merit salary adjustment.

A cancellation or withdrawal of rejection shall be without prejudice to further rejection, punitive action, or disciplinary proceedings for the same or other reasons.

NOTE: Reference: Section 19175.5, Government Code.

HISTORY

1. Originally published 3–22–45 as 123 (Title 2).
2. Revision filed 4–11–47 (Register 7).
3. Amendment filed 12–20–49 (Register 18, No. 9).
4. Amendment of NOTE filed 4–8–77; effective thirtieth day thereafter (Register 77, No. 15).

Article 15. Performance Reports

§ 340. Performance Appraisal.

NOTE: Authority cited: Section 19300, Government Code. Reference: Sections 19301 and 19302, Government Code.

HISTORY

1. Amendment of section and NOTE filed 4–8–77; effective thirtieth day thereafter (Register 77, No. 15). For prior history, see Register 60, No. 24.
2. Repealer filed 8–28–85; effective thirtieth day thereafter (Register 85, No. 35).

§ 341. Annual Reports.

HISTORY

1. Repealer filed 10–8–51; effective thirtieth day thereafter (Register 26, No. 1).

§ 342. Semiannual Reports.

HISTORY

1. Amendment and renumbering as Section 340 filed 10–8–51; effective thirtieth day thereafter (Register 26, No. 1).

§ 344. Preparation and Scoring.

HISTORY

1. Originally published 3–22–45 as § 127 (Title 2).
2. Revision filed 4–11–47 (Register 7).
3. Amendment filed 4–1–48 (Register 12, No. 1).
4. Amendment filed 10–8–51; effective thirtieth day thereafter(Register 26, No. 1).
5. Repealer filed 12–8–60; effective thirtieth day thereafter. Amendment filed 12–16–60 as an emergency deferring effective date to 4–1–61 (Register 60, No. 24).

§ 345. Notice to Employee.

HISTORY

1. Amendment filed 10–8–51; effective thirtieth day thereafter (Register 26, No. 1).
2. Repealer filed 12–8–60; effective thirtieth day thereafter. Amendment deferring effective date to 4–1–61 filed 12–16–60 as an emergency (Register 60, No. 24).

§ 346. Appeals from Performance Report.

HISTORY

1. New section filed 1–26–45 as § 130 (Register 1).

[The next page is 27.]

2. Revision filed 4–11–47 (Register 7).
3. Amendment filed 10–26–48 (Register 14, No. 4).
4. Amendment filed 9–27–55; effective thirtieth day thereafter (Register 55, No. 15).
5. Repealer filed 12–8–60; effective thirtieth day thereafter. Amendment deferring effective date to 4–1–61 filed 12–16–60 as an emergency (Register 60, No. 24).

Article 16. Absences

§ 360. Rest Periods.

HISTORY

1. New section filed 12–17–51; effective thirtieth day thereafter (Register 26, No. 7).
2. Amendment and repealer of NOTE filed 4–8–77; effective thirtieth day thereafter (Register 77, No. 15).
3. Repealer of Article 16 (Sections 360, 361, 364, 365, 367–374) filed 8–28–85; effective thirtieth day thereafter (Register 85, No. 35). For prior history of Article 16, including Sections 362, 363 and 366, see Registers 78, No. 45 and 77, No. 15.

Article 17. Vacations

§ 381. Credit for Full–Time Employment.

NOTE: Authority cited: Section 18050, Government Code. Reference: Sections 18050, 18538.1, 19143 and 19500, Government Code.

HISTORY

1. Amendment filed 11–7–69; effective thirtieth day thereafter (Register 69, No. 45). For prior history, see Register 68, No. 49.
2. Amendment of section and NOTE filed 4–8–77; effective thirtieth day thereafter (Register 77, No. 15).
3. Repealer of Article 17 (Sections 381–387) filed 8–28–85; effective thirtieth day thereafter (Register 85, No. 35).

Article 18. Sick Leave

§ 401. Definitions.

HISTORY

1. Amendment filed 1–13–48 (Register 11, No. 2).
2. Amendment filed 2–4–58; effective thirtieth day thereafter (Register 58, No. 3).
3. Amendment filed 4–8–77; effective thirtieth day thereafter (Register 77, No. 15).
4. Repealer of Article 18 (Sections 401–404, 406, 407 and 409) filed 8–28–85; effective thirtieth day thereafter (Register 85, No. 35). For prior history of Article 18, including Sections 405 and 408, see Registers 77, No. 34 and 77, No. 15.

Article 18.5. Industrial Disability Leave

For the general statutory provisions on this subject, refer to Sections 19815.4(d) through 19877.

§ 417.3. Medical Officer's Responsibilities.

Where there is disagreement concerning the medical suitability of placement of the disabled employee who has completed the vocational rehabilitation program, the State Personnel Board Medical Officer shall determine the appropriateness of the placement based upon the medical evidence submitted.

HISTORY

1. Amendment filed 4–8–77; effective thirtieth day thereafter (Register 77, No. 15).
2. Repealer of Sections 410, 410.1, 410.2, 411–417, 417.1, 417.2 and 418 filed *5–15–86 as a change without regulatory effect pursuant to Title 1, California* Administrative Code, Section 100(b)(2); effective thirtieth day thereafter (Register 86, No. 20). For prior history, see Registers 84, No. 15; 77, Nos. 34 and 15; 76, Nos. 42 and 9; 75, Nos. 44 and 24; and 74, No. 52.

Article 18.6. Nonindustrial Disability Insurance

For general statutory provisions on the subject, refer to Government Code Sections 18135–18142.

NOTE: Authority cited: Section 18701, Government Code. Reference: Sections 18135 and 18135.5, Government Code.

HISTORY

1. New Article 18.6 (Sections 419, 419.1, 420, 421, 422, and 423) filed 9–24–76 as an emergency; designated effective 10–1–76 (Register 76, No. 39).
2. Certificate of Compliance filed 1–25–77 (Register 77, No. 5).
3. Amendment and repealer of NOTE filed 4–8–77; effective thirtieth day thereafter (Register 77, No. 15).
4. Amendment filed 11–3–78; effective thirtieth day thereafter (Register 78, No. 44).
5. Amendment filed 12–7–78; effective thirtieth day thereafter (Register 78, No. 49).
6. Amendment filed 1–9–80 as an emergency; effective upon filing. Certificate of Compliance included (Register 80, No. 2).
7. Editorial reprinting of text deleted in error in Register 84, Nos. 8 and 12 (Register 84, No. 15).
8. Repealer of Article 18.6 (Sections 419–423) filed 5–15–86 as a change without regulatory effect pursuant to Title 1, California Administrative Code, Section 100(b)(2); effective thirtieth day thereafter (Register 86, No. 20).

Article 19. Transfer

For the general statutory provisions on this subject, refer to Sections 19050.2 – 19050.9 of the act.

§ 425. To Another Agency.

A transfer of an employee from a position under one appointing power to a position under another appointing power may be made, if the transfer is to a position in the same class or in another class with substantially the same salary range and designated as appropriate by the executive officer. The effective date of such transfer shall be no later than 30 calendar days after receipt of a written request from the agency requesting the employee's service to the appointing power by whom the employee is employed, unless an earlier or later date of transfer is agreeable to both appointing powers. No other type of transaction which has the same general effect as a transfer, such as reinstatement following resignation, shall be used to circumvent the above provisions.

NOTE: Reference: Section 19050.4, Government Code.

HISTORY

1. Amendment filed 3–26–68; effective thirtieth day thereafter (Register 68, No. 13).
2. Amendment of NOTE filed 4–8–77; effective thirtieth day thereafter (Register 77, No. 15).
3. Change without regulatory effect of NOTE filed 12–21–88 (Register 89, No. 1).

§ 426. Temporary Assignments or Loans.

Temporary assignments or loans of employees in accordance with Section 19050.8 of the Government Code may be made with the approval of the executive officer, provided that such assignments shall be documented by a written statement containing the following information:

(a) The duration and duties of the assignment.

(b) Certification that a layoff by reason of such assignment or loan will not become necessary in the appointing agency.

(c) If the assignment is for training and development purposes, a description of the training to be accomplished.

(d) If the temporary assignment is for compelling management need purposes, a description of the management need and the staff expertise required; justification that the agency's needs cannot be met through the existing organizational structure; certification that the employee possesses the required expertise; and certification that the employee has voluntarily consented to the assignment.

(e) If the temporary assignment is to facilitate the return of an injured employee to work, justification of the need of such an assignment and medical verification of the employee's condition.

Any participating agency or employee may terminate the assignment at any time for any reason or the executive officer may terminate it if it is being carried on contrary to or in a manner inconsistent with the Government Code or these regulations. An employee participating in such an arrangement shall be considered for all purposes of the Government Code and regulations as an employee of the agency from which loaned or assigned except that the employee's salary may be paid in any proper manner agreed upon by the participating agencies.

The board shall be notified upon termination of any temporary assignment.

NOTE: Authority cited: Section 19050.8, Government Code. Reference: Section 19050.8, Government Code.

HISTORY

1. New section filed 11–7–49 (Register 18, No. 5).
2. Amendment filed 11–16–70; effective thirtieth day thereafter (Register 70, No. 47).
3. Amendment of section and NOTE filed 4–8–77; effective thirtieth day thereafter (Register 77, No. 15).
4. Amendment filed 7–14–86; effective thirtieth day thereafter (Register 86, No. 29).
5. Change without regulatory effect of first paragraph filed 12–21–88 (Register 89, No. 1).
6. Change without regulatory effect amending subsection (e) filed 9–16–92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 39).

§ 427. Interjurisdictional Employee Exchange.

A state appointing power may with the concurrence of an employee assign or loan the employee to another jurisdiction, or may receive an employee from another jurisdiction, in accordance with Government Code Section 19050.8, except as otherwise provided by law, provided that the following conditions are met:

(a) The state appointing power determines that the assignment or loan is of benefit to the state and is for either training purposes or for compelling management need purposes as specified in Section 442.

(b) The other jurisdiction is governmental in character. It may be federal, state, or local, including other countries, public colleges and universities, and other instrumentalities, and may be in or outside of California.

(c) No layoff of state personnel is necessary.

(d) Both appointing authorities approve a written document containing, as a minimum, a statement that the assignment or loan is subject to this rule, the period and duties and conditions of the assignment or loan, the training or compelling management need to be accomplished, and provision for either continuing or substituting alternatives for all rights and benefits to which the employee of the agency or jurisdiction is otherwise entitled.

(e) Any necessary authorizations for funds or travel are obtained from the Departments of Finance, General Services, or other appropriate authority.

Employees from other jurisdictions gain no status in the California state service through such temporary assignments or loans.

For the purposes of administering the state civil service laws and regulations, a state employee participating in such an arrangement shall be considered an employee of the state agency from which loaned or assigned, except the employee's work and activities shall be subject to the direction of the jurisdiction to which loaned or assigned.

Either appointing authority or the employee may terminate the assignment at any time for any reason or the executive officer may terminate it if it is being carried on contrary to or in a manner inconsistent with the Government Code or these regulations. The employee's salary and benefits may be paid in any proper manner agreed upon by the appointing authorities of the participating agency and jurisdiction.

NOTE: Authority cited: Section 19050.8, Government Code. Reference: Section 19050.8, Government Code.

HISTORY

1. New section filed 11–6–70 as an emergency; designated effective 11–23–70. Certificate of Compliance included (Register 70, No. 45).
2. Amendment of section and NOTE filed 4–8–77; effective thirtieth day thereafter (Register 77, No. 15).
3. Amendment filed 7–14–86; effective thirtieth day thereafter (Register 86, No. 29).
4. Change without regulatory effect of first paragraph filed 12–21–88 (Register 89, No. 1).
5. Change without regulatory effect amending subsections (a) and (e) filed 9–16–92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 39).

§ 430. General.

Classes meeting the criteria established by this article shall be considered to involve substantially the same level of duties, responsibility and salary for the purposes of Government Code Section 19050.4; provided that the board or the executive officer may prohibit transfer between such classes based on a specific finding that they are in a promotional relationship.

The board or executive officer may also prohibit transfers from classes that have been specifically established for limited duration positions.

NOTE: Authority cited: Section 18701, Government Code. Reference: Section 19050.4, Government Code.

HISTORY

1. New section filed 1–6–83; effective thirtieth day thereafter (Register 83, No. 2).
2. Change without regulatory effect filed 12–21–88 (Register 89, No. 1).
3. Change without regulatory effect amending section and NOTE filed 9–16–92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 39).

§ 431. Salary and Class Level Comparisons.

(a) The following definitions shall apply to salary and class level comparisons made under this chapter:

(1) "Substantially the same salary range or salary level" means the maximum rate of the salary range of one class is less than two steps higher than or is the same as the maximum rate of the salary range of another class.

(2) "Promotional salary relationship, range or level" means the maximum rate of the salary range of one class is at least two steps higher than the maximum rate of the salary range of another class.

(3) "Salary range" means the range of rates between, and including, the minimum and maximum rate currently authorized for the class.

(4) "Rate," for employees compensated on a monthly basis, means any one of the full dollar amounts found within the salary ranges established by the Department of Personnel Administration and, for employees compensated on a daily or hourly basis, means any one of the dollar and cents amounts found within the salary range.

(5) Unless otherwise provided by resolution of the board, "step," for employees compensated on a monthly basis, means a five percent differential above or below a salary rate, rounded to the nearest dollar and, for employees compensated on a daily or hourly basis, means a five percent differential above or below a rate rounded to the nearest dollar and cents amount.

(A) Pursuant to (5), one step higher is calculated by multiplying the rate by 1.05. One step lower is calculated by dividing the rate by 1.05 (e.g., $2,300 x 1.05 = $2,415, one step higher; 2,300 ÷ 1.05 = 2,190 one step lower).

(B) Pursuant to (1) and (2), two steps higher is calculated by multiplying the rate by 1.05 and then multiplying the product by 1.05 (e.g., $2,300 x 1.05 = $2,415 x 1.05 = $2,536, two steps higher).

(b) Unless otherwise provided by resolution of the board, the maximum rate of the lowest salary range currently authorized for a class is used to make salary comparisons for the purposes of this chapter.

NOTE: Authority cited: Section 18701, Government Code. Reference: Sections 18807 and 19050.4, Government Code.

HISTORY

1. New section filed 1–6–83; effective thirtieth day thereafter (Register 83, No. 2).
2. Relettering and amendment of former subsections (a)–(c) to new subsections (a) and (b), and repealer of Schedules A and B filed 3–8–89; operative 3–8–89 (Register 89, No. 11).
3. Change without regulatory effect of subsection (a)(3) filed 6–29–89 (Register 89, No. 27).

4. Change without regulatory effect amending NOTE filed 9–16–92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 39).

§ 432. Class Series.

For the purpose of this article, a class series is any vertically related group of classes, covering the same occupational specialty and same program area, which constitute a primary promotional pattern for a specifically identifiable group of employees.

NOTE: Authority cited: Section 18701, Government Code. Reference: Section 19050.4, Government Code.

HISTORY

1. New section filed 1–6–83; effective thirtieth day thereafter (Register 83, No. 2).
2. Change without regulatory effect of NOTE filed 12–21–88 (Register 89, No. 1).
3. Change without regulatory effect amending NOTE filed 9–16–92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 39).

§ 433. Voluntary Transfers Between Classes.

Unless specifically prohibited pursuant to Section 430 or the provisions of 433.1, appointing powers may allow employees to voluntarily transfer between classes when the employee possesses any licenses, certificates, or registration required in the "to" class provided that either:

(a) The salary range of the "to" class is exactly the same or any amount lower than that of the "from" class.

Or

(b) The salary range of the "to" class is any amount higher than that of the "from" class, provided that:

(1) It is not a promotional salary range; and

(2) The two classes are in different class series unless the board specifically provides for transfer within a series; and

(3) There is no class in the "to" series that is exactly the same in salary as the "from" class; and

(4) The "to" class is the class in its series that is immediately higher in pay than the "from" class; and

(5) The transfer does not preclude a future transfer that is part of the established upward mobility pattern through which the employee is moving; and

(6) The two classes do not contain positions that have a supervisory–subordinate relationship under the appointing power making the transfer.

In applying these criteria, separate salary ranges within a class shall be treated as if they were separate classes when a board resolution allows salary ranges other than the lowest range for the class to be used for salary comparison purposes.

NOTE: Authority cited: Section 18701, Government Code. Reference: Section 19050.4, Government Code.

HISTORY

1. New section filed 1–6–83; effective thirtieth day thereafter (Register 83, No. 2).
2. Change without regulatory effect of NOTE filed 12–21–88 (Register 89, No. 1).
3. Change without regulatory effect amending opening paragraph and NOTE filed 9–16–92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 39).
4. Amendment of first paragraph filed 2–5–2002; operative 2–5–2002. Submitted to OAL for printing only pursuant to Government Code section 18213 (Register 2002, No. 12).

§ 433.1. Voluntary Transfers Between Classes—Bargaining Unit 10 Employees.

Unless specifically prohibited pursuant to Section 430, appointing powers may allow employees to voluntarily transfer between classes when the employee possesses any licenses, certificates, or registration required in the "to" class provided that either:

(a) The salary range of the "to" class is exactly the same or any amount lower than that of the "from" class; and, for any class assigned to State Bargaining Unit 10, excluding the following listed classes, the employee shall meet the minimum education requirement as identified in the respective class specification: Energy Analyst, Energy Resources Specialist I and II; Hazardous Materials Specialist, Associate Hazardous Materials Specialist and Senior Hazardous Materials Specialist (Technical); Associate Energy Specialist (Efficiency) and Energy Commission Specialist I, II, and III (Efficiency); Associate Energy Specialist (Forecasting) and Energy Commission Specialist I, II, and III (Forecasting); Associate Energy Specialist (Technology Evaluation and Development) and Energy Commission Specialist I, II, and III (Technology Evaluation and Development); Assistant and Associate Geologist and Senior Geologist (Specialist); Associate Geophysicist; Health and Safety Program Specialist I, II, and III; Assistant and Associate Meteorologist; Senior Meteorologist, Water Resources; Microbiologist Intern; Petroleum Geologist; Integrated Waste Management Specialist and Senior Integrated Waste Management Specialist; and Pest Prevention Assistant I, II, and III (Various Projects).

Or

(b) The salary range of the "to" class is any amount higher than that of the "from" class, provided that:

(1) It is not a promotional salary range; and

(2) The two classes are in different class series unless the board specifically provides for transfer within a series; and

(3) There is no class in the "to" series that is exactly the same in salary as the "from" class; and

(4) The "to" class is the class in its series that is immediately higher in pay than the "from" class; and

(5) The transfer does not preclude a future transfer that is part of the established upward mobility pattern through which the employee is moving; and

(6) The two classes do not contain positions that have a supervisory–subordinate relationship under the appointing power making the transfer; and

(7) For any class assigned to State Bargaining Unit 10, excluding the following listed classes, the employee shall meet the minimum education requirement as identified in the respective class specification: Energy Analyst, Energy Resources Specialist I and II; Hazardous Materials Specialist, Associate Hazardous Materials Specialist and Senior Hazardous Materials Specialist (Technical); Associate Energy Specialist (Efficiency) and Energy Commission Specialist I, II, and III (Efficiency); Associate Energy Specialist (Forecasting) and Energy Commission Specialist I, II, and III (Forecasting); Associate Energy Specialist (Technology Evaluation and Development) and Energy Commission Specialist I, II, and III (Technology Evaluation and Development); Assistant and Associate Geologist and Senior Geologist (Specialist); Associate Geophysicist; Health and Safety Program Specialist I, II, and III; Assistant and Associate Meteorologist; Senior Meteorologist, Water Resources; Microbiologist Intern; Petroleum Geologist; Integrated Waste Management Specialist and Senior Integrated Waste Management Specialist; and Pest Prevention Assistant I, II, and III (Various Projects).

In applying these criteria, separate salary ranges within a class shall be treated as if they were separate classes when a board resolution allows salary ranges other than the lowest range for the class to be used for salary comparison purposes.

NOTE: Authority cited: Sections 18211, 18213 and 18701, Government Code. Reference: Section 19050.4, Government Code.

HISTORY

1. New section filed 2–5–2002; operative 5–7–2002. Submitted to OAL for printing only pursuant to Government Code section 18213 (Register 2002, No. 12).
2. Editorial correction amending operative date in HISTORY 1 (Register 2002, No. 25).
3. Amendment of subsections (a) and (b)(7) and NOTE filed 5–24–2006; operative 5–24–2006. Submitted to OAL for printing only pursuant to Government Code section 18213 (Register 2006, No. 21).

§ 434. Involuntary Transfer Between Classes.

When the transfer between classes is not voluntary on the part of the employee, the class to which the employee is transferred must have prior executive officer approval.

NOTE: Authority cited: Section 18701, Government Code. Reference: Section 19050.4, Government Code.

HISTORY

1. New section filed 10–19–82; effective thirtieth day thereafter (Register 82, No. 43).
2. Change without regulatory effect of NOTE filed 12–21–88 (Register 89, No. 1).
3. Editorial correction of HISTORY 2 (Register 95, No. 5).

§ 435. Consecutive Transfer.

Consecutive transfers shall not be permitted when their combined result would be inconsistent with the provisions of this article or Government Code Section 19050.4.

NOTE: Authority cited: Section 18701, Government Code. Reference: Section 19050.4, Government Code.

HISTORY

1. New section filed 10–19–82; effective thirtieth day thereafter (Register 82, No. 43).
2. Change without regulatory effect filed 12–21–88 (Register 89, No. 1).
3. Change without regulatory effect amending section filed 9–16–92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 39).

§ 438. Temporary Assignments for Training and Development.

(a) Eligibility for training and development assignments shall be limited to:

(1) employees who have permanent status in their present class; or

(2) employees who have probationary status and who previously have had permanent status and who, since such permanent status, have had no break in service due to a permanent separation.

(b) Employees shall be allowed to accept training and development assignments involving the duties of a different class only as outlined below under (1), (2), or (3):

(1) The training and development class is a class with substantially the same salary to which the employee could voluntarily transfer under the provisions of this article.

(2) The training and development class has a promotional salary range provided that:

(A) The higher salaried class is the class in the desired occupational area nearest in salary to the employee's current class that will provide an appropriate training experience; and

(B) When the training and development class is more than three steps higher than the employee's current class, the intent of the training and development assignment is to prepare the employee for a permanent move to the training and development class or to a closely related class, and the employee will meet minimum qualifications for the higher salaried class by the conclusion of the training and development assignment; and

(C) The training and development class is not in the same class series as the employee's present class.

(3) The training and development class has a demotional salary range provided that:

(A) It is the class in the desired occupational area nearest in salary to the employee's current class that will provide the appropriate training experience; and

(B) Any assignments to classes that are more than three steps lower than the employee's status class are approved in advance by the executive officer; and

(C) The purpose of the training and development assignment is to prepare for future service in a class that has a salary range that is substantially the same or promotional in comparison to the salary range of the employee's current classification.

(D) The assignment will provide experience that differs from the duties that the employee has previously performed.

NOTE: Authority cited: Section 19050.8, Government Code. Reference: Section 19050.8, Government Code.

HISTORY

1. New section filed 1–6–83; effective thirtieth day thereafter (Register 83, No. 2).
2. Change without regulatory effect of NOTE filed 12–21–88 (Register 89, No. 1).
3. Amendment of section heading, new subsection (a), relettering and amendment of new subsection (b) and redesignating all following paragraphs filed 11–20–91; operative 12–20–91 (Register 92, No. 8).

§ 439. Status Requirement.

NOTE: Authority cited: Section 19050.8, Government Code. Reference: Section 19050.8, Government Code.

HISTORY

1. New section filed 5–23–83; effective upon filing pursuant to Government Code section 11346.2(d) (Register 83, No. 22).
2. Amendment filed 7–14–86; effective thirtieth day thereafter (Register 86, No. 29).
3. Change without regulatory effect of subsection (a) filed 12–21–88 (Register 89, No. 1).
4. Repealer filed 11–20–91; operative 12–20–91 (Register 92, No. 8).

§ 440. Promotions.

Employees may be promoted during a training and development assignment provided that:

(a) There is a vacant position to which the employee could be promoted if the employee were not on the training and development assignment; and

(b) The appointing power certifies that the employee would have been its first preference for appointment to the vacancy if he/she had not been on the training and development assignment; and

(c) No more than one person on a training and development assignment is promoted for each available vacancy; and

(d) The promotion will not result in a layoff at the termination of the training and development assignment.

The promotion and training and development assignment may be simultaneous provided that conditions of (a) through (d) above are met.

NOTE: Authority cited: Section 19050.8, Government Code. Reference: Section 19050.8, Government Code.

HISTORY

1. New section filed 5–23–83; effective upon filing pursuant to Government Code Section 11346.2(d) (Register 83, No. 22).
2. Change without regulatory effect of NOTE filed 12–21–88 (Register 89, No. 1).

§ 441. Consecutive Temporary Assignments.

Prior executive officer approval shall be required for any temporary assignment as defined in Government Code Section 19050.8 that results in an employee spending more than 24 months of any 36–month period on such temporary assignments. Such assignments shall not be approved when the executive officer determines that they constitute a continuation of the employee's previous temporary assignment.

NOTE: Authority cited: Section 19050.8, Government Code. Reference: Section 19050.8, Government Code.

HISTORY

1. New section filed 5–23–83; effective upon filing pursuant to Government Code Section 11346.2(d) (Register 83, No. 22).
2. Amendment filed 7–14–86; effective thirtieth day thereafter (Register 86, No. 29).
3. Change without regulatory effect filed 12–21–88 (Register 89, No. 1).

§ 442. Temporary Assignment to Meet Compelling Management Needs.

(a) Eligibility for compelling management needs assignments shall be limited to:

(1) employees who have permanent status in their present class; or

(2) employees who previously have had permanent status and who, since such permanent status, have had no break in service due to a permanent separation.

(b) Subject to the approval of the executive officer, the appointing power may make temporary assignments pursuant to Government Code Section 19050.8 to meet program or departmental needs of limited duration that have a broad and significant impact on departmental operations and efficiency. Such needs must be urgent and nonrecurring and may involve either:

(1) Special projects or assignments that require a breadth and depth of demonstrated expertise or a level or response that cannot be obtained under normal staffing procedures; or

(2) Staffing situations that require temporary reassignments to prevent or alleviate a negative impact upon departmental operations and efficiency.

(c) Temporary assignments shall not be made or continued under this section where there is a reasonable basis for utilizing or pursuing other personnel management options, such as transfer, list appointment, classification plan changes, adverse action, layoff, probationary rejection, or medical termination. Other staff shall not be laid off, demoted, or similar-

ly displaced as a result of temporary assignments made under this section.

(d) Employees placed on temporary assignments to meet a compelling management need shall remain in their current classifications for all purposes of the Act and these regulations. The duties and responsibilities of the position associated with the compelling management need may vary from those of the employee's appointment classification. Such assignments may only be made with the voluntary consent of the employee.

(e) An employee in a Career Executive Assignment may be placed in a temporary assignment to meet a compelling management need in accordance with the provisions of this section so long as such reassignment does not generate the need for an additional appointment to the Career Executive Assignment position. Prior executive officer approval shall be required.

(f) Either the employee or the appointing power may terminate the temporary assignment at any time for any reason, or the executive officer may terminate it, if it is determined to be inconsistent with the Government Code or board regulations.

(g) Within 30 days of approving any assignment under this section, the appointing power shall provide written notification of such assignment to the Department of Personnel Administration.

NOTE: Authority cited: Section 19050.8, Government Code. Reference: Section 19050.8, Government Code.

HISTORY

1. New section filed 7–14–86; effective thirtieth day thereafter (Register 86, No. 29).
2. Change without regulatory effect of subsection (a) filed 12–21–88 (Register 89, No. 1).
3. New subsection (a) and relettering of following paragraphs filed 11–20–91; operative 12–20–91 (Register 92, No. 8).
4. Change without regulatory effect amending subsections (c)–(g) filed 9–16–92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 39).

§ 443. Temporary Assignments for Injured Employees.

(a) Eligibility for returning injured employees to work assignments shall be limited to:

(1) employees who have permanent or probationary status in their present class; or

(2) employees who previously have had permanent or probationary status and who, since having had such status, have had no break in service due to a permanent separation.

(b) This section specifies when injured employees may receive temporary assignments involving duties of a class other than the one to which they are appointed. Temporary assignments involving duties that fall within the employee's appointment class may be made without respect to this section.

(c) For the purpose of Government Code Section 19050.8(c) an "injured" employee is an eligible employee with a medically verified disability, injury, or illness, whether job or nonjob related, that requires the employee to be reassigned to duties outside his/her current classification in order to remain productive.

(d) Eligibility for temporary assignments shall be limited to injured employees who, based on medical opinion, are unable to perform the essential duties of their current classification.

(e) When the employee and appointing power agree, an injured and eligible employee, including a career executive, may be placed in a temporarily modified work assignment involving duties not within the employee's current class for up to two years provided that:

(1) Such assignments shall not involve the duties of a class that has a promotional relationship to the employee's appointment class; and

(2) The assignments may involve the duties of a class that has a demotional relationship to the employee's appointment class only to the extent that such a demotional assignment is required in order to provide a productive work assignment that is within the employee's capability; and

(3) Such assignments for career executive employees require prior approval by the executive officer.

(4) Such assignments for career executive employees do not generate the need for an additional appointment to the Career Executive Assignment position.

[The next page is 31.]

(f) A probationary employee who is placed on a temporary assignment as defined in Government Code Section 19050.8(c) shall be considered temporarily absent from his/her appointment classification, and shall be subject to the probationary period extension provisions of Section 321.

(g) Either the employee or the appointing power may terminate the temporary assignment at any time for any reason, or the executive officer may terminate it, if it is determined to be inconsistent with the Government Code or board regulations.

NOTE: Authority cited: Section 19050.8, Government Code. Reference: Section 19050.8, Government Code.

HISTORY

1. New section filed 7–14–86; effective thirtieth day thereafter (Register 86, No. 29).
2. Change without regulatory effect of subsections (b) and (e) filed 12–21–88 (Register 89, No. 1).
3. New subsection (a) and relettering of following subsections including amendment to subsection (c) filed 11–20–91; operative 12–20–91 (Register 92, No. 8).
4. Change without regulatory effect amending subsections (b), (f) and (g) filed 9–16–92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 39).

§ 444. Publication and Screening.

(a) Unless exempted under subsection (b), all transfers and training and development assignments that result in an employee moving to a position that is covered by an affirmative action or upward mobility goal established pursuant to Government Code Sections 19232, 19402, or 19790 shall be subject to the following posting and screening requirements.

(1) Advance notice of the opportunity for such movement shall be posted for at least seven days at the worksites of eligible departmental employees. Posting may be limited to geographic areas within which employees could reasonably be expected to accept the opportunity without a change of residence. The executive officer may specify a broader area of notice consistent with recruitment patterns for the class when she/he determines that an adequate affirmative action candidate group does not exist within the area specified above.

Alternatives to this posting process may be allowed when the executive officer finds that such alternatives are at least as effective as the prescribed process in meeting established affirmative action and upward mobility goals.

(2) The advance notice shall describe the opportunity and its duration and location and shall state that the opportunity is being offered consistent with State laws and Executive Orders ensuring equal opportunity for employment regardless of an applicant's sex, race, religion, ancestry, disability, age, or sexual orientation.

(3) All applicants must be considered based on published standards and criteria that have been made available to them during the application filing period. The consideration may consist of an application evaluation, oral interview, or similar civil service selection techniques.

(4) All applicants shall be informed of the results of the screening process. When the results will be used to select employees for future vacancies or training opportunities, the applicants shall be informed of their eligibility for such future selection.

(b) Transfers and training and development assignments shall be exempt from the requirements specified in section (a) when they:

(1) Involve movement of an employee between positions that are within the same classification and appointing power.

(2) Are intended to remedy a particular employee's performance deficiency that has been identified through the performance evaluation process conducted pursuant to Government Code Sections 19172 or 19992.2; or

(3) Provide a modified work assignment that is necessary to continue the employment of an injured or disabled employee; or

(4) Involve movement of an employee between positions under the same appointing power that fall within the same occupational and level category for affirmative action and upward mobility goal–setting purposes; or

(5) Are necessary to avoid the need to layoff or demote an employee, or involuntarily transfer an employee to another classification or to another geographic location that would require an employee to change his or her place of residence; or

(6) Are needed to continue the employment of an individual hired through the Career Opportunity Development Program established by the Welfare Reform Act of 1971.

NOTE: Authority cited: Sections 18701, 19792 and 19050.3, Government Code. Reference: Sections 19233, 19406 and 19792, Government Code.

HISTORY

1. New section filed 9–12–83; effective thirtieth day thereafter (Register 83, No. 38).
2. Change without regulatory effect of NOTE filed 12–21–88 (Register 89, No. 1).
3. Change without regulatory effect amending subsections (a)–(a)(1) filed 9–16–92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 39).

Article 20. Separations from Service

For the general statutory provisions on this subject, refer to Section 19500 of the act and sections following.

§ 445. Resignation from State Service.

HISTORY

1. Amendment filed 4–8–77; effective thirtieth day thereafter (Register 77, No. 15).
2. Repealer filed 5–15–86 as a change without regulatory effect pursuant to Title 1, California Administrative Code, Section 100(b)(2); effective thirtieth day thereafter (Register 86, No. 20).

§ 446. Temporary and Permanent Separations.

Temporary separations from state service shall include all types of leave of absence including leave under Section 599.785, military leave, suspension, termination for medical reasons, termination of permanent or probationary employee by layoff, termination by displacement, and disability retirement. Permanent separations from state service shall include dismissal; resignation; automatic resignation (AWOL); rejection during probationary period; termination for failure to meet conditions of employment; termination of limited–term, temporary authorization, emergency, Career Executive Assignment, or exempt appointment; and service retirement.

NOTE: Authority cited: Section 18701, Government Code. Reference: Section 19996, Government Code.

HISTORY

1. New section filed 11–27–68; effective thirtieth day thereafter (Register 68, No. 45).
2. Amendment of NOTE filed 4–8–77; effective thirtieth day thereafter (Register 77, No. 15).
3. Editorial reprinting of text deleted in error in Register 84, Nos. 8 and 12 (Register 84, No. 15).
4. Amendment filed 8–28–85; effective thirtieth day thereafter (Register 85, No. 35).
5. Change without regulatory effect amending section filed 9–16–92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 39).

§ 447. Continuity of Intermittent Employment.

NOTE: Reference: Section 19100, Government Code.

HISTORY

1. New section filed 5–15–73; effective thirtieth day thereafter (Register 73, No. 20).
2. Repealer filed 5–15–86 as a change without regulatory effect pursuant to Title 1, California Administrative Code, Section 100(b)82); effective thirtieth day thereafter (Register 86, No. 20).

§ 448. Automatic Resignation of Intermittent Employees.

(a) An intermittent employee whose continuity of employment in a position is interrupted by a nonwork period that extends longer than one year may be considered to have automatically resigned from the position without fault as of one year from the last day the employee was on pay status subject to the restrictions in subsection (b).

(b) separations are restricted to:

(1) nonwork periods not covered by a paid leave, a formal leave of absence without pay or other temporary separation and,

(2) those circumstances which create a presumption that the employee has abandoned his or her position.

NOTE: Authority cited: Section 18701, Government Code. Reference: Section 19100.5, Government Code.

HISTORY

1. New section filed 5–15–73; effective thirtieth day thereafter (Register 73, No. 20).
2. Amendment of section and NOTE filed 4–8–77; effective thirtieth day thereafter (Register 77, No. 15).
3. Editorial reprinting of text deleted in error in Register 84, Nos. 8 and 12 (Register 84, No. 15).
4. Amendment filed 8–28–85; effective thirtieth day thereafter (Register 85, No. 35).
5. Designation and amendment of subsection (a), new subsections (b)–(b)(2) and amendment of NOTE filed 9–4–92; operative 10–5–92 (Register 92, No. 36).

Article 21. Layoff Review

For the general statutory provisions on this subject, refer to Section 19530 of the act and sections following.

§ 458. Corrective Action Initiated by the Executive Officer.

When a position is reallocated to a lower class and the appointing authority fails within a four–month period following the reallocation either to reassign appropriate duties, to effect a change of status of the incumbent to a class appropriate for the assigned duties, or to develop a plan for corrective action which is approved by the executive officer, the executive officer may, pursuant to Government Code Section 18804, initiate a layoff in the class, including determining the area of layoff, or such other corrective action as deemed appropriate.

The appointing authority shall provide, upon request of the executive officer, in accordance with Government Code Section 18573, all the necessary information required to effect the corrective action.

The procedures established by the executive officer to implement this section shall provide for appropriate and timely notification to employees concerned of board actions which affect their position or status.

NOTE: Reference: Sections 18573 and 18804, Government Code.

HISTORY

1. New section filed 4–26–67; effective thirtieth day thereafter (Register 67, No. 17).
2. Amendment of section and NOTE filed 4–8–77; effective thirtieth day thereafter (Register 77, No. 15).
3. Change without regulatory effect amending section filed 9–16–92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 39).
4. Amendment of article heading filed 5–7–2003 subject to partial compliance with the Administrative Procedure Act and limited review by the Office of Administrative Law pursuant to Government Code section 18215; effective on filing pursuant to Government Code section 11343.4 (Register 2003, No. 19). For prior history of sections 450–457 and 460, see Register 25, No. 5, Register 60, No. 24 and Register 86, No. 20.

§ 470. General.

A department undergoing layoff shall, prior to implementing a layoff, notify the board's executive officer of the impending layoff so that the executive officer may determine the applicability of Government Code Section 19798. If federal law or the United States Constitution requires the adjustment of the order of layoff pursuant to Government Code Section 19798, or if the failure to adjust the order of layoff in accordance with Government Code Section 19798 would result in ineligibility for a federal program and a loss of federal funds, a department may not proceed with a seniority–based layoff, but may have to adjust the order of layoff under the circumstances set forth in Section 471.

NOTE: Authority cited: Section 18701, Government Code. Reference: Section 19798, Government Code; and *Connerly v. State Personnel Bd.* (2001) 92 Cal. App. 4th 16.

HISTORY

1. New section filed 6–5–81; effective thirtieth day thereafter (Register 81, No. 23).
2. Repealer and new section and amendment of NOTE filed 5–7–2003 subject to partial compliance with the Administrative Procedure Act and limited review by the Office of Administrative Law pursuant to Government Code section 18215; effective on filing pursuant to Government Code section 11343.4 (Register 2003, No. 19).

§ 470.1. Definitions.

For purposes of this Article, in conjunction with the definitions used in Section 547.80, the following definitions shall apply:

(a) "Affected Workforce" means all employees in the class(es) of layoff.

(b) "Census Survey" is the assessment of affected workforce group members by means of analysis of questionnaires, in which the employees self–designate their race/ethnicity, gender, and, if applicable, disability category.

(c) "Class(es) of Layoff" means the class(es) designated for a reduction of incumbents through layoff, or demotion in lieu of layoff, under the provisions of Government Code Sections 19997, 19997.8 and 19997.9.

(d) "Department" means the civil service workforce under the appointing power initiating the layoff.

(e) "Relevant Labor Force" means the pool of individuals who possess the requisite qualifications for the classification or occupational group within the geographic area in which the department can reasonably expect to recruit.

NOTE: Authority cited: Sections 18701 and 19231, Government Code. Reference: Sections 11092.5, 12940, 19792, 19798, 19997, 19997.2, 19997.8 and 19997.9, Government Code; and Public Health and Welfare Code, Title 42, Chapter 126, Sections 12101–12117 (Americans with Disabilities Act of 1990 [ADA]).

HISTORY

1. New section filed 7–9–87 as an emergency; operative 7–9–87 (Register 87, No. 30). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 11–6–87.
2. Repealed by operation of Government Code section 11346.1(g) (Register 88, No. 26).
3. New section filed 6–16–88; operative 7–16–88 (Register 88, No. 26).
4. Amendment of subsection (b)(4)(G), new subsection (f) and relettering, and amendment of newly designated (g) and NOTE filed 2–24–92; operative 3–25–92 (Register 92, No. 12).
5. Change without regulatory effect amending subsections (a)(4)(G) and (g) filed 9–16–92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 39).
6. Amendment of subsection (b)(4), repealer of subsections (b)(4)(A)–(G), and amendment of NOTE filed 10–20–94; operative 11–21–94 (Register 94, No. 42).
7. Amendment of section and NOTE filed 5–7–2003 subject to partial compliance with the Administrative Procedure Act and limited review by the Office of Administrative Law pursuant to Government Code section 18215; effective on filing pursuant to Government Code section 11343.4 (Register 2003, No. 19).

§ 471. Layoff Impact Determination.

(a) A department undergoing layoff shall provide information to the board to allow the board to determine whether the department is required by federal law to adjust the order of layoff, or whether the department is mandated to conduct a seniority–based layoff, unless a seniority–based layoff would conflict with the provisions of a memorandum of understanding reached pursuant to the Ralph C. Dills Act, Government Code Section 3512 et seq. (Dills Act).

(1) The information to be provided to the board may consist of citation either to any applicable federal authority that requires the department to adjust the order of layoff pursuant to Government Code Section 19798, or to any information that shows that the failure to adjust the order of layoff in accordance with Government Code Section 19798 would result in ineligibility for a federal program and a loss of federal funds.

(2) If the department is subject to no federal authority that would require it to adjust the order of layoff pursuant to Government Code Section 19798, and is not aware of any information that shows that the failure to adjust the order of layoff in accordance with Government Code Section 19798 would result in ineligibility for a federal program and a loss of federal funds, the department may so state in a declaration submitted to the board, and served upon the respective employee organization whose members may be impacted by the layoff.

(b) If the department determines that it is subject to the provisions of Government Code Section 19798, the department shall provide to the board evidence that it served upon the affected employee(s) and respective employee organization(s) notice of the department's determination under subsection 471(a)(1).

(c) If the executive officer determines that the department has demonstrated that it is not required by any federal authority to adjust the order of layoff and is not aware of any information that shows that the failure to adjust the order of layoff in accordance with Government Code Section 19798 would result in ineligibility for a federal program and a loss of federal funds, the layoff review process shall end and the executive officer shall authorize the department to proceed with a seniority–based layoff of employees in the class(es) of layoff, unless a seniority–based layoff would conflict with the provisions of a memorandum of understanding reached pursuant to the Dills Act.

(d) If the executive officer determines pursuant to subsection 471(a)(1) that the department is required by federal law to adjust the order of layoff or that the failure to adjust the order of layoff in accordance with Government Code Section 19798 would result in ineligibility for a federal program and a loss of federal funds, and that therefore an adjustment of the order of layoff may be necessary, the department shall provide the following additional information to the board:

(1) Results of a departmental census survey of all employees in the class(es) of layoff, using SPB 1070, State Employee Race/Ethnicity Questionnaire (7/02), and SPB 131A, State Employee Disability Questionnaire Resurvey (6/01), which are hereby incorporated by reference in their entirety;

(2) Listing of the affected workforce incumbents in seniority order; and

(3) Any additional supporting information.

(e) Using the information provided by the department pursuant to subsections 471(d)(1), (2), and (3), the executive officer shall conduct a data analysis of the composition of the affected labor force by comparing the most relevant labor force representation with the current representation and post–layoff representation. If the analysis establishes that the labor force representation in the affected workforce after layoff would be either substantially the same as it was before such layoff, or equal to its relevant labor force percentage, the executive officer may authorize the department to proceed with a seniority–based layoff of employees in the class(es) of layoff.

(f) If the analysis conducted in subsection 471(e) establishes that the labor force representation after layoff will not be substantially the same as it was before layoff, the executive officer shall conduct an analysis of any evidence of the existence of discrimination in past hiring practices. This analysis shall include, but is not limited to, a review of job–related hiring and recruiting practices, bottom–line hiring and examination data, discrimination or merit issue complaints and appeals, or any other relevant and factual information. If this analysis establishes the possibility of past discriminatory hiring practices in the class(es) of layoff, the executive officer shall schedule a hearing as provided in Section 472.

(g) At any time during the board's review process, the executive officer may authorize a seniority–based layoff of part of the affected workforce in order to retain a sufficient number of employees with the highest seniority scores in the class(es) of layoff so as to maintain the same representation in the affected class(es) as existed prior to the layoff. Such retention shall not alter the order of seniority established for the current layoff.

NOTE: Authority cited: Section 18701, Government Code. Reference: Sections 18654.5, 19790 and 19798, Government Code; and *Connerly v. State Personnel Bd.* (2001) 92 Cal. App. 4th 16.

HISTORY

1. New section filed 6–5–81; effective thirtieth day thereafter (Register 81, No. 23).
2. Amendment filed 7–9–87 as an emergency; operative 7–9–87 (Register 87, No. 30). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 11–6–87.
3. Emergency language filed 7–9–87 repealed by operation of Government Code section 11346.1(f) (Register 88, No. 26).
4. Amendment filed 6–16–88; operative 7–16–88 (Register 88, No. 26).
5. Amendment filed 2–24–92; operative 3–25–92 (Register 92, No. 12).
6. Amendment of section heading, repealer and new section and amendment of NOTE filed 5–7–2003 subject to partial compliance with the Administrative Procedure Act and limited review by the Office of Administrative Law pursuant to Government Code section 18215; effective on filing pursuant to Government Code section 11343.4 (Register 2003, No. 19).

§ 471.1. Appeals.

All appeals submitted under this section shall be in writing and filed no later than 30 days from the date the affected employee, respective employee organization, or department was notified of the determination or decision of the department or executive officer under Section 471 by the department or the executive officer. Any factual assertions in support of the appeal shall be supported by documentary evidence and/or declarations under penalty of perjury.

(a) Appeal(s) as to the results of the departmental census survey and race/ethnicity, gender, or disability identification of the employee, and appeals as to whether the department is or is not mandated by federal law to adjust the order of layoff or would be at risk of losing federal funding if it does not adjust the order of layoff, shall be filed with the executive officer for resolution. The appeal(s) shall, at a minimum, set forth the legal and factual basis for the appeal(s). The executive officer shall investigate and may request additional information from the filing party and/or the department. If the appellant or the department disagrees with the decision of the executive officer, the appellant or the department may appeal that decision to the board, no later than 30 days from the date of notification of the determination by the executive officer. The board may rule on the appeal with or without a hearing.

(b) Appeal(s) as to the determination by the executive officer to allow the department to proceed with a seniority–based layoff of all or part of the affected workforce shall be filed with the Appeals Division of the State Personnel Board for resolution. The appeal(s) shall, at a minimum, set forth the legal and factual arguments as to why the determination(s) challenged in the appeal is/are improper. The Appeals Division shall be authorized to investigate and may conduct a hearing.

(c) The filing of an appeal pursuant to Section 37 shall not delay the implementation of a decision to proceed with a seniority–based layoff.

NOTE: Authority cited: Section 18701, Government Code. Reference: Section 19798, Government Code; and *Connerly v. State Personnel Bd.* (2001) 92 Cal. App. 4th 16.

HISTORY

1. New section filed 5–7–2003 subject to partial compliance with the Administrative Procedure Act and limited review by the Office of Administrative Law pursuant to Government Code section 18215; effective on filing pursuant to Government Code section 11343.4 (Register 2003, No. 19).

§ 472. Past Hiring Practices Hearing.

When required by Section 471 or ordered pursuant to Section 471.1, the board shall conduct a hearing to determine if past discriminatory hiring practices have occurred in the class(es) of layoff.

(a) The executive officer shall give the department and employees in the affected workforce at least 15 days notice of the hearing and shall prepare a written report for the hearing. The report shall include all available data, statistical and otherwise, concerning past hiring practices related to the class(es) of layoff.

(b) Any other party may also present evidence at the hearing concerning past hiring practices related to the class(es) of layoff.

(c) If the board finds that past discriminatory hiring practices related to the class(es) of layoff have occurred, it shall:

(1) Issue Findings of Fact supporting its determination and an order to remedy such discrimination. To the extent permitted by law, such an order may include, but is not limited to, changing the order and/or subdivision(s) of layoff and reemployment so that the relative composition of the affected workforce of that category of employees discriminated against will be, as nearly as possible, the same immediately after the layoff as it was immediately before the layoff for those affected workforce groups.

(2) If the board finds no discrimination in past hiring practices has occurred, it shall issue an order requiring the layoff to continue in the normal order of seniority, unless a seniority–based layoff would conflict with the provisions of a memorandum of understanding reached pursuant to the Dills Act.

NOTE: Authority cited: Sections 18701 and 19702.1, Government Code. Reference: Sections 19790 and 19798, Government Code; and *Connerly v. State Personnel Bd.* (2001) 92 Cal. App. 4th 16.

HISTORY

1. New section filed 6–5–81; effective thirtieth day thereafter (Register 81, No. 23).
2. Amendment filed 7–9–87 as an emergency; operative 7–9–87 (Register 87, No. 30). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 11–6–87.
3. Emergency language filed 7–9–87 repealed by operation of Government Code section 11346.1(f) (Register 88, No. 26).
4. Amendment filed 6–16–88; operative 7–16–88 Register 88, No. 26).
5. Amendment of subsections (a) and (b) filed 2–24–92; operative 3–25–92 (Register 92, No. 12).
6. Amendment of section and NOTE filed 5–7–2003 subject to partial compliance with the Administrative Procedure Act and limited review by the Office of Administrative Law pursuant to Government Code section 18215; effective on filing pursuant to Government Code section 11343.4 (Register 2003, No. 19).

§ 473. Considerations, Board Determination.

NOTE: Authority cited: Section 18701, Government Code. Reference: Section 19798, Government Code.

HISTORY

1. New section filed 6–5–81; effective thirtieth day thereafter (Register 81, No. 23).
2. Renumbering and amendment of Section 473 to 472 filed 7–9–87 as an emergency; operative 7–9–87 (Register 87, No. 30). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 11–6–87.
3. Emergency language filed 7–9–87 repealed by operation of Government Code Section 11346.1(f) (Register 88, No. 26).
4. Repealer filed 6–16–88; operative 7–16–88 (Register 88, No. 26).

Article 22. Duration Appointments

§ 500. Effective Date.

Under authority of Section 19200 of the Government Code, the provisions of this article shall become effective whenever, subsequent to the adoption of this article, the Governor finds and proclaims that an emergency exists in preparing for the national defense.

NOTE: Reference: Section 19200, Government Code.

HISTORY

1. New Article 22 (§§ 500 to 513, inclusive) filed 11–27–50; designated to be effective when the Governor finds and proclaims that an emergency exists in preparing for the national defense. As of 12–2–50 the Governor has not made such a finding and proclamation (Register 22, No. 3).
2. Amendment of NOTE filed 4–8–77; effective thirtieth day thereafter (Register 77, No. 15).

§ 501. Scope and Application.

The executive officer shall require that appointments shall be made on a duration basis to all classes and positions in the state civil service, during the period these regulations are in effect except that he or she may permit regular appointments and hold regular examinations whenever this would be in the best interests of the State. Unless otherwise provided in these regulations, the regulations governing the status, tenure, and conditions of employment of regular employees shall govern the status and tenure of duration employees.

NOTE: Authority cited: Section 18701, Government Code. Reference: Section 19100.5, Government Code.

HISTORY

1. Amendment filed 8–28–85; effective thirtieth day thereafter (Register 85, No. 35).
2. Change without regulatory effect amending section and NOTE filed 9–16–92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 39).

§ 502. Definitions.

(a) "Duration appointment" means an appointment made under the provisions of Section 19200 of the Government Code and this article. Any such appointment shall terminate not later than 90 days after the Governor finds and proclaims that for the purposes of Section 19200 of the Government Code an emergency no longer exists.

(b) "Duration open examination" means an open competitive examination held for the express purpose of providing a list of persons available for duration appointment to state civil service positions.

(c) "Duration promotional examination" means a promotional examination held for the express purpose of providing a list of persons available for promotion by duration appointment to state civil service positions.

(d) "Duration employment list" means a duration eligible list, duration subdivisional promotional list, duration departmental promotional list, duration service–wide promotional list, duration departmental reemployment list, duration subdivisional reemployment list, or duration general reemployment list.

(e) "Duration eligible list" means a list of persons who have been examined in a duration open examination and who are eligible for certification only for duration appointment to state civil service positions.

(f) "Duration subdivisional promotional list" means a list of persons eligible for certification for duration appointment to a specific class resulting from a duration promotional examination for a particular subdivision of a state agency.

(g) "Duration departmental promotional list" means a list of persons eligible for certification for duration appointment to a specific class resulting from a duration promotional examination for a particular state agency.

(h) "Duration service–wide promotional list" means a list of persons eligible for certification for duration appointment to a specific class resulting from a duration promotional examination for the entire state service.

(i) "Duration general reemployment list" means a list established for the reemployment by duration appointment of persons in a particular class in any state agency, irrespective of the state agency in which the persons were previously employed.

(j) "Duration departmental reemployment list" means a list established for the reemployment by duration appointment of persons in a particular class in a particular state agency.

(k) "Duration subdivisional reemployment list" means a list established for the reemployment by duration appointment of persons in a particular class in a particular subdivision of a state agency.

(*l*) "Limited–term duration appointment" means a duration appointment from a duration or regular employment list for a period less than the probationary period.

(m) "Duration employee" means a person legally holding a position in the state civil service by reason of a duration appointment.

(n) "Probationary duration employee" or "duration probationer" means an employee who is serving a probationary period following a duration appointment from a duration or regular employment list.

(o) "Limited–term duration employee" means a duration employee appointed from a duration or regular employment list for a period less than the probationary period.

§ 503. Duration Examinations.

To establish lists of persons available for duration appointment, the executive officer may hold duration open examinations and duration promotional examinations. Duration employment lists shall not be used in making regular appointments. The regulations governing the conduct of regular examinations shall govern the conduct of duration examinations.

§ 504. Certification of Eligibles.

(a) Duration appointments may be made from regular or duration employment lists. The order of preference of employment lists in certifying eligibles for duration appointment shall be: subdivisional reemployment list, duration subdivisional reemployment list, departmental reemployment list, duration departmental reemployment list, subdivisional promotional list, duration subdivisional promotional list, departmental promotional list, duration departmental promotional list, general reemployment list, duration general reemployment list, service–wide promotional list, duration service–wide promotional list, eligible list, and duration eligible list.

(b) The certification of names from, the establishment of, and the maintenance of each type of duration employment list shall be done in accordance with the regulations that apply to the corresponding regular employment list, except as may be provided otherwise in these regulations.

(c) The acceptance or declination of a duration appointment from a regular employment list shall not affect the rights of an eligible to certification for a regular permanent appointment. The name of an eligible who accepts a duration appointment after certification from a regular employment list shall be retained on that list but the name shall not be certified in the making of additional duration appointments from that employment list.

HISTORY

1. Change without regulatory effect amending subsection (b) filed 9–16–92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 39).

§ 505. Probationary Period for Duration Appointment.

(a) Duration appointments shall be made subject to the same probation requirements as for regular permanent appointments.

(b) A permanent employee or a duration employee who has completed his probation and who has vacated his position to accept a duration appointment in another class and is rejected during the probationary period shall be reinstated in his former position.

§ 506. Eligibility for Promotion.

(a) Duration promotional examinations shall be open to permanent employees and duration employees who have completed their probation and shall otherwise be governed by the regulations applicable to regular promotional examinations.

(b) A duration employee shall not be eligible to compete in a regular promotional examination unless immediately preceding his duration appointment he had permanent civil service status in a class designated as appropriate for the examination.

§ 507. Reports of Performance.

HISTORY

1. Repealer filed 5–15–86 as a change without regulatory effect pursuant to Title 1, California Administrative Code, Section 100(b)(2); effective thirtieth day thereafter (Register 86, No. 20).

§ 508. Counting of Duration Service.

HISTORY

1. Repealer filed 5–15–86 as a change without regulatory effect pursuant to Title 1, California Administrative Code, Section 100(b)(2); effective thirtieth day thereafter (Register 86, No. 20).

§ 509. Layoff.

HISTORY

1. Repealer filed 5–15–86 as a change without regulatory effect pursuant to Title 1, California Administrative Code, Section 100(b)(2); effective thirtieth day thereafter (Register 86, No. 20).

§ 510. Leave of Absence.

HISTORY

1. Repealer filed 5–15–86 as a change without regulatory effect pursuant to Title 1, California Administrative Code, Section 100(b)(2); effective thirtieth day thereafter (Register 86, No. 20).

§ 511. Discipline and Demotion.

The regulations governing the discipline, demotion, rejection, or dismissal of regular probationer or permanent employees shall apply to duration employees.

§ 512. Reinstatement.

Except as otherwise provided in these regulations, the regulations governing reinstatement of probationary or permanent employees shall apply to duration employees.

HISTORY

1. Change without regulatory effect amending section filed 9–16–92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 39).

§ 513. Termination.

(a) All duration appointments, unless sooner terminated by layoff or other means of separation, shall terminate 90 days after the Governor finds and proclaims that, for the purposes of Section 19200 of the Government Code, the emergency no longer exists. No duration employee, nor any person on a duration employment list, shall then be eligible for further state civil service employment except as he may otherwise be legally appointed.

(b) At the termination of a duration appointment, or of a temporary appointment immediately following the duration appointment, an employee who immediately preceding such appointments was a permanent or probationary employee shall be entitled to return to his former position, or a position in his former class in the same agency and in the same locality.

(c) All duration employment lists shall expire 90 days after the Governor finds and proclaims that for purposes of Section 19200 of the Government Code, the emergency no longer exists.

NOTE: Authority cited: Section 18701, Government Code. Reference: Section 19100, Government Code.

HISTORY

1. Amendment filed 8–28–85; effective thirtieth day thereafter (Register 85, No. 35).

§ 520. Personnel Reduction.

NOTE: Authority cited: Section 18701, Government Code. Reference: Sections 18031, 18032 and 18037, Government Code.

HISTORY

1. New section filed 4–3–81; effective thirtieth day thereafter (Register 81, No. 14).
2. Editorial reprinting of text deleted in error in Register 84, Nos. 8 and 12 (Register 84, No. 15).
3. Repealer filed 5–15–86 as a change without regulatory effect pursuant to Title 1, California Administrative Code, Section 100(b)(2); effective thirtieth day thereafter (Register 86, No. 20).

§ 521. Reduced Worktime Schedules.

NOTE: Authority cited: Section 18701, Government Code. Reference: Section 18034(a), (b), (c), Government Code.

HISTORY

1. New section filed 4–3–81; effective thirtieth day thereafter (Register 81, No. 14).
2. Repealer filed 5–15–86 as a change without regulatory effect pursuant to Title 1, California Administrative Code, Section 100(b)(2); effective thirtieth day thereafter (Register 86, No. 20).

§ 522. Return to Full–Time Work.

NOTE: Authority cited: Section 18701, Government Code. Reference: Section 18034(d), Government Code.

HISTORY

1. New section filed 4–3–81; effective thirtieth day thereafter (Register 81, No. 14).
2. Editorial reprinting of text deleted in error in Register 84, Nos. 8 and 12 (Register 84, No. 15).
3. Repealer filed 5–15–86 as a change without regulatory effect pursuant to Title 1, California Administrative Code, Section 100(b)(2); effective thirtieth day thereafter (Register 86, No. 20).

§ 523. Layoff of Reduced Worktime Employees.

NOTE: Authority cited: Section 18701, Government Code. Reference: Sections 18034(e), 19530–19541, Government Code.

HISTORY

1. New section filed 4–3–81; effective thirtieth day thereafter (Register 81, No. 14).
2. Editorial reprinting of text deleted in error in Register 84, Nos. 8 and 12 (Register 84, No. 15).
3. Repealer filed 5–15–86 as a change without regulatory effect pursuant to Title 1, California Administrative Code, Section 100(b)(2); effective thirtieth day thereafter (Register 86, No. 20).

§ 524. Rights of Employees.

NOTE: Authority cited: Section 18701, Government Code. Reference: Sections 18038, and 18714(a), Government Code.

HISTORY

1. New section filed 4–3–81; effective thirtieth day thereafter (Register 81, No. 14).
2. Editorial reprinting of text deleted in error in Register 84, Nos. 8 and 12 (Register 84, No. 15).

3. Repealer filed 5–15–86 as a change without regulatory effect pursuant to Title 1, California Administrative Code, Section 100(b)(2); effective thirtieth day thereafter (Register 86, No. 20).

§ 525. Reporting Programs.

NOTE: Authority cited: Section 18701, Government Code. Reference: Section 18039, Government Code.

HISTORY

1. New section filed 4–3–81; effective thirtieth day thereafter (Register 81, No. 14).
2. Editorial reprinting of text deleted in error in Register 84, Nos. 8 and 12 (Register 84, No. 15).
3. Repealer filed 5–15–86 as a change without regulatory effect pursuant to Title 1, California Administrative Code, Section 100(b)(2); effective thirtieth day thereafter (Register 86, No. 20).

Article 23. Training

§ 530. In–Service Training—Definitions.

NOTE: Authority cited: Section 18701, Government Code. Reference: Sections 19450 and 19451, Government Code.

HISTORY

1. Repealer of Article 23 (Sections 531–537) and new Article 23 (Sections 530, 531, 532, 533, 533.1–533.3 and 534–536) filed 3–11–72; effective thirtieth day thereafter (Register 72, No. 13). For history of former Article, see Register 58, No. 5.
2. Repealer of Article 23 (Sections 530–533, 533.1–533.3 and 534–536) filed 8–28–85; effective thirtieth day thereafter (Register 85, No. 35).

Article 24. Employer–Employee Relations

§ 540. Definition of a Grievance.

NOTE: Reference: Section 18714, Government Code.

HISTORY

1. New section filed 4–27–61; designated effective 9–1–61 (Register 61, No. 9).
2. Amendment filed 11–27–68; effective thirtieth day thereafter (Register 68, No. 45).
3. Amendment of section and NOTE filed 4–8–77; effective thirtieth day thereafter (Register 77, No. 15).
4. Repealer of Article 24 (Sections 540, 540.1–540.11 and 543–546) filed 8–28–85; effective thirtieth day thereafter (Register 85, No. 35). For prior history of Article 24, including Section 541, see Registers 77, No. 17 and 77, No. 15.

Article 25. Discrimination

§ 547. Discrimination Prohibition.

Discrimination in violation of state or federal law shall be prohibited in State employment practices. All issues relating to alleged violation of Federal or State anti–discrimination laws shall be resolved using the appeal process provided in Sections 54 to 54.2 inclusive.

NOTE: Authority: Section 18701, Government Code. Reference: Sections 19700, 19701, 19702, 19702.1, 19702.2, 19702.5, 19703, 19704 and 19705, Government Code.

HISTORY

1. New article 25 (sections 547, 547.1 and 547.2) filed 3–22–76; effective thirtieth day thereafter (Register 76, No. 13).
2. Amendment of NOTE filed 4–8–77; effective thirtieth day thereafter (Register 77, No. 15).
3. Amendment filed 4–26–90; operative 5–26–90 (Register 90, No. 22).
4. Change without regulatory effect amending section filed 9–16–92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 39).

§ 547.1. Procedure for Resolving Discrimination Complaints.

A complaint against an action, decision, policy or condition which is within the authority of the appointing power to resolve shall be first considered by the appointing power before referral to the Personnel Board. A complaint of discrimination which cannot be resolved by the appointing power, or which is not within the authority of the appointing power to resolve, shall be filed with the Personnel Board as an appeal. The executive officer may first attempt to resolve such a complaint informally, or refer it to the board for hearing. Complaints which do not allege discrimination as set forth in Section 547 shall be dealt with through the grievance procedure, if applicable, or filed as an appeal to the board.

Each complaint must in writing and state clearly the facts upon which it is based, and the relief requested, in sufficient detail for the reviewing authority to understand the nature of the complaint and who is involved.

Each appointing power may establish a written procedure through which an employee may obtain consideration for an allegation of discrimination. All such procedures are subject to the approval of the executive officer. Until the appointing power establishes an approved procedure, the standard procedure prescribed by the executive officer shall apply.

HISTORY

1. Change without regulatory effect amending section filed 9–16–92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 39).

§ 547.2. Standards.

HISTORY

1. Renumbering and amendment of former section 547.2 to section 54.2 filed 4–26–90; operative 5–26–90 (Register 90, No. 22).

Article 26. Mandatory Retirement

§ 547.20. Eligibility.

NOTE: Authority cited: Section 18701, Government Code. Reference: Section 20983.5, Government Code.

HISTORY

1. New Article 26 (Sections 547.20 through 547.27) filed 12–7–78; effective thirtieth day thereafter (Register 78, No. 49).
2. Repealed pursuant to Title 1, Section 100(b)(2) of the California Administrative Code (Register 86, No. 28).

§ 547.21. Determination of Eligibility.

NOTE: Authority cited: Section 18701, Government Code. Reference: Section 20983.5, Government Code.

HISTORY

1. Repealed pursuant to Title 1, Section 100(b)(2) of the California Administrative Code (Register 86, No. 28).

§ 547.22. Application for Certificate.

NOTE: Authority cited: Section 18701, Government Code. Reference: Section 20983.5, Government Code.

HISTORY

1. Repealed pursuant to Title 1, Section 100(b)(2) of the California Administrative Code (Register 86, No. 28).

§ 547.23. Expiration and Recertification.

NOTE: Authority cited: Section 18701, Government Code. Reference: Section 20983.5, Government Code.

HISTORY

1. Repealed pursuant to Title 1, Section 100(b)(2) of the California Administrative Code (Register 86, No. 28).

§ 547.24. Appeal Rights.

NOTE: Authority cited: Section 18701, Government Code. Reference: Section 20983.5, Government Code.

HISTORY

1. Repealed pursuant to Title 1, Section 100(b)(2) of the California Administrative Code (Register 86, No. 28).

§ 547.25. Appeal Process.

NOTE: Authority cited: Section 18701, Government Code. Reference: Section 20983.5, Government Code.

HISTORY

1. Repealed pursuant to Title 1, Section 100(b)(2) of the California Administrative Code (Register 86, No. 28).

§ 547.26. Temporary Certifications.

NOTE: Authority cited: Section 18701, Government Code. Reference: Section 20983.5, Government Code.

HISTORY

1. Repealed pursuant to Title 1, Section 100(b)(2) of the California Administrative Code (Register 86, No. 28).

§ 547.27. Return Rights.

NOTE: Authority cited: Section 18701, Government Code. Reference: Section 20983.5, Government Code.

HISTORY
1. Repealed pursuant to Title 1, Section 100(b)(2) of the California Administrative Code (Register 86, No. 28).

Article 27. Discriminatory Employment Practices

§ 547.30. Objectives.

NOTE: Authority cited: Sections 18701, 19233 and 19792, Government Code. Reference: Sections 18670, 18710, 19233, 19702.1 and 19792, Government Code.

HISTORY
1. New Article 27 (Sections 547.30–547.33) filed 9–3–82; effective thirtieth day thereafter (Register 82, No. 36).
2. Change without regulatory effect repealing article 27 (sections 547.30–547.34) and section filed 6–24–98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 26).

§ 547.31. Definitions.

NOTE: Authority cited: Sections 18701, 19233 and 19792, Government Code. Reference: Section 19231, Government Code; and Public Health and Welfare Code, Title 42, Chapter 126, Sections 12101–12117 (Americans with Disabilities Act of 1990 [ADA]).

HISTORY
1. Change without regulatory effect amending subsection (a) filed 9–16–92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 39).
2. Amendment of subsection (a), new subsections (a)(1)–(4), and amendment of subsections (b) and (f) and NOTE filed 10–20–94; operative 11–21–94 (Register 94, No. 42).
3. Change without regulatory effect repealing section filed 6–24–98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 26).

§ 547.32. Hearings.

NOTE: Authority cited: Sections 18701, 19233 and 19792, Government Code. Reference: Sections 18670, 19233, 19790 and 19792, Government Code.

HISTORY
1. Change without regulatory effect amending subsections (c)(1), (f) and (g) filed 9–16–92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 39).
2. Change without regulatory effect repealing section filed 6–24–98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 26).

§ 547.33. Remedial Order.

NOTE: Authority cited: Sections 18701, 19233 and 19792, Government Code. Reference: Sections 18710, 19790 and 19792, Government Code.

HISTORY
1. Change without regulatory effect amending subsections (a) and (f) filed 9–16–92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 39).
2. Change without regulatory effect repealing section filed 6–24–98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 26).

§ 547.34. American Indian Verification.

NOTE: Authority cited: Sections 18701, 19705 and 19790, Government Code. Reference: Sections 19705, 19790 and 19792, Government Code.

HISTORY
1. New section filed 8–28–86; operative 9–27–86 (Register 86, No. 35).
2. Change without regulatory effect repealing section filed 6–24–98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 26).

Article 28. Limited Examination and Appointment Program

§ 547.50. Scope.

(a) This article shall apply to the alternative category of civil service examination and appointment established for the hiring of individuals with disabilities defined by Section 10. For purposes of this article, the alternative category shall be known as the "Limited Examination and Appointment Program" and referred to as LEAP in the remainder of this article.

(b) Participants in LEAP who receive a temporary appointment to a job classification established to assess their ability to perform in the regular civil service class shall have the same status as regular civil service employees with temporary appointments.

(c) All board regulations shall apply to persons participating in LEAP unless such regulations are in conflict with regulations in this article. If there is such a conflict, the regulations in this article shall apply.

NOTE: Authority cited: Sections 18701 and 19241, Government Code. Reference: Sections 19240–19244, Government Code; and Public Health and Welfare Code,

[The next page is 39.]

Title 42, Chapter 126, Sections 12101–12117 (Americans with Disabilities Act of 1990 [ADA]).

HISTORY

1. New section filed 5–17–89; operative 6–1–89 (Register 89, No. 21).
2. Change without regulatory effect amending subsections (a) and (c) filed 9–16–92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 39).
3. Amendment of subsection (a) and NOTE filed 10–20–94; operative 11–21–94 (Register 94, No. 42).

§ 547.51. LEAP Eligibility Criteria.

(a) Only those applicants who possess the following shall be eligible to participate in the LEAP process:

(1) Written Verification from the California Department of Rehabilitation certifying that the applicant meets the definition of an individual with a disability contained in Section 10; and

(2) The education and experience requirements established by the board for participation in a LEAP classification examination.

(b) Where there is disagreement concerning the applicant's medical qualifications to be LEAP certified as specified in Section (a)(1), the executive officer shall determine the appropriateness of the certification based on the medical evidence submitted.

NOTE: Authority cited: Sections 18701 and 19421, Government Code. Reference: Sections 18931, 19241 and 19242.2, Government Code; and Public Health and Welfare Code, Title 42, Chapter 126, Sections 12101–12117 (Americans with Disabilities Act of 1990 [ADA]).

HISTORY

1. New section filed 5–17–89; operative 6–1–89 (Register 89, No. 21).
2. Amendment filed 2–21–92; operative 3–23–92 (Register 92, No. 12).
3. Change without regulatory effect amending subsection (a) filed 9–16–92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 39).
4. Amendment of subsection (a)(1) and NOTE filed 10–20–94; operative 11–21–94 (Register 94, No. 42).

§ 547.52. LEAP Readiness Evaluations.

The education, experience and personal qualifications of LEAP applicants who meet the eligibility requirements of Section 547.51 shall be evaluated by competitive examination to determine readiness for appointment. Those applicants who are ready for immediate employment in a LEAP classification shall be placed on the referral list specified in Government Code Section 19242.2.

NOTE: Authority cited: Section 18701 and 19241, Government Code. Reference: Sections 19242 and 19242.2, Government Code.

HISTORY

1. New section filed 5–17–89; operative 6–1–89 (Register 89, No. 21).
2. Change without regulatory effect amending section filed 9–16–92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 39).
3. Amendment of section heading and section filed 7–14–98; operative 7–14–98 pursuant to Government Code section 11343.4(d) (Register 98, No. 29).

§ 547.53. Appointment to a LEAP Classification.

(a) Appointment to a LEAP classification shall be restricted to those who meet the criteria in Sections 547.51 and 547.52 and who are selected from a referral list as described in Section 19242.2, Government Code.

(b) LEAP eligibles shall remain on the referral list until they are appointed from the list or the list is abolished.

NOTE: Authority cited: Section 18701 and 19241, Government Code. Reference: Section 19242.4, Government Code.

HISTORY

1. New section filed 5–17–89; operative 6–1–89 (Register 89, No. 21).
2. Change without regulatory effect amending subsection (a) filed 9–16–92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 39).

§ 547.54. LEAP Job Examination Period.

(a) Appointment to a LEAP classification constitutes the beginning of a LEAP job examination period. The length of the LEAP job examination period shall be one–third the length of the probationary period of the permanent civil service class to which it is expected that the LEAP candidate will be appointed upon satisfactory completion of the LEAP job examination period unless extended under the provisions of Section 547.55(a) or reduced under the provisions of Section 547.55(b).

(b) Each LEAP candidate, upon appointment, shall be provided by the appointing power with written information which shall identify the specific knowledge, skills and abilities that are to be assessed in order to determine during the LEAP job examination period the candidate's ability to perform the duties of the permanent civil service classification to which appointment is sought.

(c) The executive officer shall determine the appropriate test of fitness for each LEAP classification. This test of fitness shall provide the LEAP candidates with sufficient opportunity to demonstrate that they possess the satisfactory level of knowledge, skill and ability to effectively perform the duties of the regular civil service classification to which appointment is sought.

(d) During the prescribed LEAP job examination period, the appointing power shall evaluate each LEAP candidate's ability to perform satisfactorily the duties of the regular civil service classification to which appointment is sought. LEAP candidate shall receive a written report of evaluation from the appointing power no less than once every four weeks.

NOTE: Authority cited: Sections 18701 and 19241, Government Code. Reference: Sections 19242.4 and 19242.8, Government Code.

HISTORY

1. New section filed 5–17–89; operative 6–1–89 (Register 89, No. 21).
2. Change without regulatory effect amending subsection (a) filed 9–16–92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 39).

§ 547.55. Extension or Reduction in Job Examination Period.

(a) When the executive officer determines that the LEAP candidate has not been given the opportunity to demonstrate knowledge, skill and ability in a specific area identified in Section 547.54(b), the LEAP job examination period shall be extended for a period determined appropriate by the executive officer. Such extensions shall not result in the appointment exceeding the nine–month limit specified in Article VII of the State Constitution.

(b) The LEAP job examination period specified in Section 547.54(a) shall be reduced if the executive officer determines that all of the following apply:

(1) The LEAP candidate held a position in state civil service during twelve–month period prior to the effective date of the LEAP appointment; and

(2) The duties performed in the position in (1) above were equivalent in level of responsibility and requirements of knowledge, skills and abilities to the duties of the position to which the LEAP candidate will be appointed upon completion of the LEAP job examination period; and

(3) The position in (1) above was held by the LEAP candidate for a period of time that equals or exceeds the LEAP job examination period specified in Section 547.54(a); and

(4) The LEAP candidate has written evidence of satisfactory performance in all aspects of the position in (1) above; and

(5) The LEAP candidate's current appointing power requests that the LEAP job examination period be reduced.

(c) If all conditions specified in (b) above are met, the job examination period shall be reduced to a period determined appropriate by the executive officer.

NOTE: Authority cited: Sections 18701 and 19241, Government Code. Reference: Sections 19242.4 and 19243.2, Government Code.

HISTORY

1. New section filed 5–17–89; operative 6–1–89 (Register 89, No. 21).
2. Change without regulatory effect amending section heading and subsections (a), (b) and (b)(3) filed 9–16–92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 39).

§ 547.56. Transition from LEAP Position to Regular Civil Service Position.

(a) The executive officer shall approve the LEAP candidate appointment to the regular civil service classification that corresponds to the LEAP classification if the following conditions are met:

(1) The job examination period specified in Section 547.54(a) has been successfully completed; and

(2) The appointing power submits verification to the executive officer that the LEAP candidate has successfully completed the LEAP job examination period.

(b) If, within 30 days of the end of the job examination period, the appointing power does not either extend the candidate's job examination period in accordance with Government Code Section 19243.2, or terminate the candidate's appointment in accordance with Government Code Section 19243.4, the candidate shall be presumed to have qualified in the examination and shall be appointed to the regular civil service classification effective the day following the last day of the job examination period.

NOTE: Authority cited: Sections 18701 and 19241, Government Code. Reference: Sections 19242.9, 19243, 19243.2, and 19243.4, Government Code.

HISTORY

1. New section filed 5–17–89; operative 6–1–89 (Register 89, No. 21).
2. Amendment of subsection (a)(1), (b) and NOTE filed 2–21–92; operative 3–23–92 (Register 92, No. 12).
3. Change without regulatory effect amending subsection (a)(1) filed 9–16–92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 39).

§ 547.57. Termination During Job Examination Period.

(a) A LEAP candidate's appointment shall be terminated by the appointing power during or no later than 30 days following completion of the LEAP job examination period for failure to meet conditions for appointment provided in Section 547.53; failure to satisfactorily demonstrate the level of knowledge, skill and ability required by Section 547.54; for other reasons relating to the candidate's qualifications; for the good of the service; or for failure to demonstrate merit, efficiency, fitness including medical condition, or moral responsibility; but he or she shall not be terminated for any cause constituting prohibited discrimination as set forth in Government Code Sections 19700 to 19703, inclusive.

(b) A LEAP candidate whose appointment is terminated shall be given written notice by the appointing power of the proposed action at least five working days prior to the effective date of the termination. Such notice shall specify the reasons for the termination, the right to respond to the appointing power and the right to appeal the action to the State Personnel Board under the provisions of Sections 51–54.2.

(c) An appeal from termination shall be assigned to the hearing office process as defined in Section 52. The provisions of Government Code Sections 19574.1, 19574.2, 19579, 19580, 19581, and 19581.5 shall apply in the disposition of an appeal.

(d) To resolve the appeal, the board shall do one of the following:

(1) Affirm the action of the appointing power.

(2) Modify the action of the appointing power.

(3) Restore the name of the appellant to the LEAP referral list from which appointed.

(4) Restore the appellant to the position from which he or she was terminated but this shall be done only if the board determines, after hearing, that there is no substantial evidence to support the reason or reasons for termination, or that the termination was made in fraud or bad faith. At any such hearing, the appellant shall have the burden of proof; subject to rebuttal by him or her, it shall presumed that the termination was free from fraud and bad faith and that the statement of reasons therefor in the notice of termination is true.

(e) If the board restores a terminated LEAP candidate to his or her position, it shall direct the payment of salary to the employee for such period of time as the termination was improperly in effect as prescribed in Government Code Section 19180.

(f) The board, by decision or upon written request of a LEAP candidate whose appointment is terminated for reasons relating to the LEAP candidate's ability to demonstrate the knowledge, skill, and ability required by Section 547.54 and who is legally eligible for appointment in accordance with Section 547.53, shall restore the name of the LEAP candidate to the LEAP referral list from which appointed for the remaining period of eligibility.

NOTE: Authority cited: Sections 18701 and 19241, Government Code. Reference: Sections 19180, 19243.4, 19244, 19574.1, 19574.2, 19579, 19580, 19581, and 19581.5, Government Code.

HISTORY

1. New section filed 5–17–89; operative 6–1–89 (Register 89, No. 21).
2. Amendment filed 2–21–92; operative 3–23–92 (Register 92, No. 12).
3. Change without regulatory effect amending section filed 9–16–92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 39).

Subchapter 1.5. Personal Services Contracts

Article 1. Definitions

§ 547.59. Definition of a Personal Services Contract.

(a) A "Personal Services Contract" is defined as any contract, requisition, purchase order, etc. (except public works contracts) under which labor or personal services is a significant, separately identifiable element. The business or person performing these contractual services must be an independent contractor that does not have status as an employee of the State.

(b) A "cost–savings based Personal Services Contract" is any Personal Services Contract proposed to achieve cost savings and subject to the provisions of Government Code Section 19130(a).

NOTE: Authority cited: Section 18701, Government Code. Reference: Section 19130, Government Code.

HISTORY

1. Change without regulatory effect renumbering and amending former section 279.1 to section 547.59 filed 12–1–99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 49).
2. Editorial correction providing correct placement for section 547.59 in subchapter 1.5, article 1 (Register 99, No. 51).
3. Change without regulatory effect renumbering and relocating former article 1 heading to article 2 and adopting new article 1 heading filed 2–7–2000 pursuant to section 100, title 1, California Code of Regulations (Register 2000, No. 6).

Article 2. Procedures for Reviewing Personal Services Contracts Proposed or Entered Into Pursuant to Government Code §19130(b)

§ 547.60. Standard and Control for Approval of Contracts.

When a state agency requests approval from the Department of General Services for a contract let under Government Code §19130(b), the agency shall include with its contract transmittal a written justification that includes specific and detailed factual information that demonstrates how the contract meets one or more of the conditions specified in Government Code §19130(b).

NOTE: Authority cited: Section 10337(a), Public Contract Code; and Section 18701, Government Code. Reference: Section 19130, Government Code.

HISTORY

1. New subchapter 1.5 (articles 1–3), article 1 (sections 547.60–547.63) and section filed 5–3–99; operative 5–3–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 19).
2. Change without regulatory effect renumbering and relocating former article 1 heading to article 2 filed 2–7–2000 pursuant to section 100, title 1, California Code of Regulations (Register 2000, No. 6).

§ 547.61. Employee Organization's Request for Review.

(a) Any employee organization that represents state employees may request that the board review a contract proposed or executed by a state agency pursuant to Government Code §19130(b) by filing with the board and serving upon the state agency a written request for review. The employee organization's request for review shall identify the contract to be reviewed and include the following:

(1) specific and detailed factual information that demonstrates how the contract fails to meet the conditions specified in Government Code §19130(b); and

(2) documentary evidence and/or declarations in support of the employee organization's position.

(b) The employee organization shall file a proof of service with the board that states when and how it served a copy of its request for review upon the state agency.

NOTE: Authority cited: Section 18701, Government Code. Reference: Sections 19130 and 19132, Government Code; and Section 10337, Public Contract Code.

HISTORY
1. New section filed 5–3–99; operative 5–3–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 19).

§ 547.62. State Agency's Response.

Within 7 days after the state agency receives a copy of the employee organization's request for review, the state agency shall serve a copy of that request upon the contractor(s) to the disputed contract. Within 15 days after the state agency receives a copy of the employee organization's request for review, the state agency shall file with the board and serve upon the employee organization:

(a) a copy of the proposed or executed contract; and

(b) the state agency's written response to the employee organization's request for review, which shall include:

(1) specific and detailed factual information that demonstrates how the contract meets one or more of the conditions specified in Government Code §19130(b); and

(2) documentary evidence and/or declarations in support of the state agency's position.

NOTE: Authority cited: Section 18701, Government Code. Reference: Sections 19130 and 19132, Government Code; and Section 10337, Public Contract Code.

HISTORY
1. New section filed 5–3–99; operative 5–3–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 19).

§ 547.63. Employee Organization's Reply.

Within 5 days after it receives from the state agency a copy of the contract and the state agency's response, an employee organization may file with the board and serve upon the state agency a written reply to the state agency's response.

NOTE: Authority cited: Section 18701, Government Code. Reference: Sections 19130 and 19132, Government Code; and Section 10337, Public Contract Code.

HISTORY
1. New section filed 5–3–99; operative 5–3–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 19).

Article 3. Supplemental Procedures for Reviewing Personal Services Contracts Executed Under Either Government Code §19130(a) or §19130(b)

§ 547.64. Executive Officer Decision.

Within 30 days after receiving a copy of the proposed or executed contract, the executive officer shall do one of the following:

(a) If the employee organization has shown that good cause exists for referring the disputed contract for a hearing for the purpose of taking evidence and hearing arguments, the executive officer, in accordance with §547.65, shall refer the matter to an administrative law judge or other authorized representative of the board to conduct an evidentiary hearing and submit a proposed decision; or

(b) If the employee organization has not shown that good cause exists for referring the disputed contract for a hearing for the purpose of taking evidence and hearing arguments, the executive officer shall issue a written decision either approving or disapproving the contract and explaining the reasons for the decision. The executive officer shall promptly give notice of his decision to all parties.

NOTE: Authority cited: Section 18701, Government Code. Reference: Sections 19130 and 19132, Government Code; and Section 10337, Public Contract Code.

HISTORY
1. New article 2 (sections 547.64–547.65) and section filed 5–3–99; operative 5–3–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 19).
2. Change without regulatory effect renumbering former article 2 heading to article 3 filed 2–7–2000 pursuant to section 100, title 1, California Code of Regulations (Register 2000, No. 6).

§ 547.65. Evidentiary Hearing.

(a) Request for a Board Hearing. The employee organization may request that, in lieu of the executive officer making a decision approving or disapproving the disputed contract, the disputed contract be referred to the board for a hearing. To make such a request, the employee organization shall include with its request for review written arguments, evidence, and/or declarations that show good cause exists for scheduling a hearing for the purpose of receiving evidence and hearing arguments concerning the propriety of the disputed contract.

(b) Good Cause. In order to show that good cause exists for referring the disputed contract for a hearing for the purpose of taking evidence and hearing arguments, the employee organization must show that there are disputed issues of material fact regarding the contract that must be resolved before a determination is made as to whether the disputed contract meets the criteria of Government Code §19130 and that an evidentiary hearing is necessary to resolve these disputed issues of material fact.

(c) Executive Officer Determination. The determination as to whether the employee organization has shown that good cause exists for referring the disputed contract for an evidentiary hearing shall be made by the executive officer. If the executive officer determines that good cause does not exist for referring the disputed contract for an evidentiary hearing, the contract review process shall proceed as an investigation, and the executive officer shall issue a decision approving or disapproving the contract.

(d) Conduct of an Evidentiary Hearing. Upon finding that the employee organization has shown good cause for referring the disputed contract for an evidentiary hearing, the executive officer shall refer the contract to an administrative law judge or other authorized representative of the board to conduct an evidentiary hearing and submit a proposed decision to the board in accordance with the procedures set forth in Government Code, Title 2, Division 5, Part 2, Chapter 2, Article 2 (commencing with §18670) and Chapter 7, Article 1 (commencing with §19570), and the board regulations promulgated thereunder.

NOTE: Authority cited: Section 18701, Government Code. Reference: Sections 19130, 19131 and 19132, Government Code; and Section 10337, Public Contract Code.

HISTORY
1. New section filed 5–3–99; operative 5–3–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 19).

Article 4. Procedures for Appealing an Executive Officer's Decision Approving or Disapproving a Contract Under Government Code §19130(a) or §19130(b) to the Board

§ 547.66. Appeal from an Executive Officer's Decision.

Any party may appeal the executive officer's decision to the board by filing a written request with the board within 30 days after issuance of the executive officer's decision. (See §547.64(b).) Upon receipt of a timely appeal, the executive officer shall schedule the matter for briefing and oral arguments before the board. The board will decide the appeal upon the factual information, documentary evidence, and declarations submitted to the executive officer before he or she issued his or her decision. Upon the objection of a party, the board will not accept additional factual information, documentary evidence, or declarations that were not previously filed with the executive officer if the board finds that the submission of this additional factual information, documentary evidence, or declarations would be unduly prejudicial to the objecting party.

NOTE: Authority cited: Section 18701, Government Code. Reference: Sections 18654.5, 18670, 19130, 19131 and 19132, Government Code; and Section 10337, Public Contract Code.

HISTORY
1. New article 3 (section 547.66) and section filed 5–3–99; operative 5–3–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 19).

2. Change without regulatory effect renumbering former article 3 heading to article 4 filed 2–7–2000 pursuant to section 100, title 1, California Code of Regulations (Register 2000, No. 6).

Article 5. Procedures that Apply to Review Proceedings for Contracts Executed Under Government Code §19130(a) or §19130(b)

§ 547.67. General Procedures.

(a) Continuances and Extensions. The executive officer may grant continuances of oral arguments before the board and extensions of time for briefs or other documents for those oral arguments upon the consent of all parties or for good cause shown.

(b) Filing. Requests for review, agency responses, briefs, and other documents may be filed with the board by facsimile sent to the chief counsel's office. A document will be considered filed with the board when the board actually receives it.

(c) Service. Requests for review, agency responses, briefs and other documents shall be served upon all other parties by personal delivery, facsimile, telecopy, express mail or other means designed to ensure that they are received by the other parties on the same day they are filed with the board.

NOTE: Authority cited: Section 18701, Government Code. Reference: Sections 18670, 19130, 19131 and 19132, Government Code; and Section 10337, Public Contract Code.

HISTORY

1. New article 4 (sections 547.67–547.68) and section filed 5–3–99; operative 5–3–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 19).
2. Change without regulatory effect renumbering former article 4 heading to article 5 filed 2–7–2000 pursuant to section 100, title 1, California Code of Regulations (Register 2000, No. 6).

§ 547.68. Intervention.

(a) At any time after an employee organization requests that that board review a contract for compliance with Government Code §19130(a) or §19130(b), a contractor to the disputed contract may move to intervene as a party in the contract review process. Either the executive officer, administrative law judge or authorized representative who conducts an evidentiary hearing, or board, may grant a motion for intervention if all the following conditions are satisfied:

(1) A written motion is filed with the board, with copies served upon the state agency and the employee organization.

(2) The motion is made as early as practicable.

(3) The motion states facts demonstrating that the applicant has an interest in the disputed contract that may be affected by a decision upon that contract or that the applicant qualifies as an intervenor under a statute or regulation.

(4) The executive officer, administrative law judge, authorized representative or board determines that the interests of justice and the orderly and prompt conduct of the contract review process will not be impaired by allowing the intervention.

(b) If an applicant qualifies for intervention, the executive officer, administrative law judge, authorized representative or board may impose conditions on the intervenor's participation in the contract review process, either at the time that intervention is granted or at a subsequent time. Conditions include, but are not limited to, the following:

(1) Limiting the intervenor's participation to designated issues in which the intervenor has a particular interest demonstrated by the motion.

(2) Limiting or excluding the intervenor's participation in any proceedings so as to promote the orderly and prompt conduct of the executive officer's investigation, the administrative law judge's or authorized representative's evidentiary hearing, or the oral arguments before the board.

(3) Requiring two or more intervenors to combine their presentations of evidence and arguments, and other participation during the executive officer's investigation, the administrative law judge's or authorized representative's evidentiary hearing, or oral arguments before the board.

(4) Limiting or excluding the intervenor's participation in settlement negotiations.

(c) As early as practicable in advance of the executive officer's investigation, the administrative law judge's or authorized representative's evidentiary hearing, or oral arguments before the board, the executive officer, administrative law judge, authorized representative or board shall issue an order granting or denying the motion for intervention, specifying any conditions, and briefly stating the reasons for the order. The executive officer, administrative law judge, authorized representative or board may modify the order at any time, stating the reasons for the modification. The executive officer, administrative law judge, authorized representative or board shall promptly give notice of an order granting, denying, or modifying intervention to the applicant and to all parties.

(d) Whether the interests of justice and the orderly and prompt conduct of the contract review process shall be impaired by allowing intervention is a determination to be made in the sole discretion, and based on the knowledge and judgment at that time, of the executive officer, administrative law judge, authorized representative or board. The determination is not subject to administrative or judicial review.

(e) If a contractor's motion for intervention is denied, the executive officer, administrative law judge, authorized representative or board may permit that contractor to submit written arguments and participate in the executive officer's investigation, the evidentiary hearing before the administrative law judge or authorized representative, or oral arguments before the board as the executive officer, administrative law judge, authorized representative or board may deem appropriate under the circumstances.

NOTE: Authority cited: Section 18701, Government Code. Reference: Sections 11440.50, 19130, 19131 and 19132, Government Code; and Section 10337, Public Contract Code.

HISTORY

1. New section filed 5–3–99; operative 5–3–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 19).
2. Change without regulatory effect correcting reference citation to Government Code section 11440.50 filed 5–4–99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 19).

Article 6. Procedures that Apply to Contracts Under Government Code §19130(a)

§ 547.69. State Agency Notice of Intent to Execute Cost Savings Personal Services Contract.

(a) Any state agency proposing to execute a contract pursuant to Government Code section 19130(a), shall file with the board a Notice of Intent to Execute Personal Services Contract.

(b) The Notice of Intent shall include the following:

(1) A complete copy of the proposed contract;

(2) The following information with respect to those civil service employees who would otherwise perform the services to be rendered under the contract:

(A) The number of civil service employees in each classification who would otherwise perform the services;

(B) The number of hours required for each civil service employee to perform the services;

(C) The base hourly wage, as set forth in the State of California Civil Service Pay Scale, that the agency would be required to pay civil service employees to perform those services to be rendered under the contract.

(i) The cost of any employee benefits, as set forth in section (b)(2)(D), direct overhead costs, as set forth in section (b)(2)(E), indirect overhead costs, as set forth in section (b)(2)(F), or any other costs, shall not be included in the base hourly wage calculation, unless specifically authorized by this section;

(ii) The cost of any recruitment or retention pay bonus or differential, or any geographic pay bonus or differential, that the agency is required

by law or collective bargaining agreement to pay to employ civil service employees to perform those services to be rendered under the contract, shall be calculated as part of the base hourly wage. If the bonus or differential is disbursed as a lump sum payment, the cost of the bonus or differential shall be amortized over the term of the proposed contract. The cost of any remuneration paid to an employee due to the employee possessing specialized skills or abilities (e.g., bilingual verbal and written skills), shall not be included as part of the base hourly wage, unless the specialized skill or ability is a prerequisite for employment in the civil service position that performs those services to be rendered under the contract. The state agency shall provide detailed, factual information concerning its assertion that it is required to pay any recruitment or retention pay bonus or differential, or any geographic pay bonus or differential, or that it incurs any additional costs to compensate individuals with specialized skills or abilities, in order to employ civil service employees to perform those services to be rendered under the contract.

(D) The hourly cost of employee benefits the agency would be required to provide to each civil service employee to perform those services to be rendered under the contract.

(i) For those proposed contracts not subject to the provisions of Government Code section 19134, employee benefits shall be itemized and limited to the following: health insurance premiums; dental insurance premiums; vision insurance premiums; employer contributions to employee retirement plans, including social security; paid holidays; sick leave benefits; and vacation leave benefits. For purposes of this section, hourly benefit costs shall be derived by calculating the annual cost per employee for each specified benefit, divided by the number of hours each employee is employed on an annual basis. The state agency shall also disclose the basis for, and methodology utilized, in arriving at its conclusions as to the annual cost for each specified employee benefit;

(ii) For those proposed contracts subject to the provisions of Government Code section 19134, hourly benefit costs shall be established using rates based on single employee, employee plus one dependent, and employee plus two or more dependents, or the costs may be based on a blended rate, as set forth in the "Personal Services Contract Pay Rates" published by the Department of Personnel Administration. To the extent that the hourly benefit rates established by the Department of Personnel Administration consist of items that would otherwise be categorized under the base hourly wage, direct overhead cost, or indirect overhead cost provisions of this section, the agency may only include those items as hourly benefit costs;

(E) The hourly cost of direct overhead costs the state agency would incur if it employed civil service employees to perform those services to be rendered under the contract.

(i) For purposes of this section, direct overhead costs shall be itemized and include, but not be limited to, the following: workers compensation insurance budget costs; unemployment insurance budget costs; disability insurance budget costs; additional rent and utilities that would only be incurred if the services in question were performed by the civil service; additional equipment and materials needed to perform those services to be rendered under the contract that would only be incurred if the services in question were performed by the civil service; uniforms; training mandated by law or otherwise required by the agency; background investigations, medical examinations, or drug testing, mandated by law or otherwise required by the agency; and reimbursement for licenses, certificates, or similar requirements needed before a civil service employee can perform those services to be rendered under the contract. For purposes of this section, hourly direct overhead costs shall be derived by calculating the annual cost per employee for each specified direct overhead cost, divided by the number of hours each employee is employed on an annual basis. The state agency shall also disclose the basis for, and methodology utilized, in arriving at its conclusions as to the annual cost for each specified direct overhead cost;

(ii) The cost of any equipment necessary to perform the contracted–for services claimed as a direct overhead cost shall be calculated by establishing the cost incurred each year by the contracting agency for the use of the equipment. (For example, a laptop computer purchased at an initial cost of $2,000.00, depreciates at a rate of $500.00 per year for each year of use. For a contract of three years duration, the state agency can claim computer equipment costs of $500.00 per year, for a total contract cost of $1,500.00.) If the equipment is leased, the contracting agency can claim the annual lease cost of the equipment as an annual direct overhead cost. The state agency shall disclose the basis for, and methodology utilized, in arriving at its conclusions as to the annual cost for each piece of equipment identified as a direct overhead cost incurred in the performance of the contracted–for services.

(iii) The cost of any uniforms claimed as a direct overhead cost shall be calculated by establishing the cost incurred each year by the contracting agency for the purchase of uniforms. (For example, for a contract of four years duration, the state agency purchases uniforms for each civil service employee at a cost of $200.00 during the first year of the contract, and $200.00 during the third year of the contract, for a total of $400.00 during the four year contract term. The state agency can claim $100.00 per employee, per year, in uniform costs.) In those instances where the civil service employee receives an annual uniform allowance, the annual uniform allowance shall be allowed as a direct overhead cost. The state agency shall disclose the basis for, and methodology utilized, in arriving at its conclusions as to the annual cost for each uniform cost identified as a direct overhead cost.

(iv) Any other costs incurred by the state agency when employing civil service employees to perform the contracted–for services, and claimed by the state agency as a direct overhead cost, including, but not limited to, the cost of background investigations, medical examinations, drug testing, license procurement, certificate procurement, or training, shall be calculated by establishing the cost incurred each year by the contracting agency for each cost claimed. (For example, for a contract of four years duration, the state agency conducts drug testing for each civil service employee at a cost of $200.00 during the first year of the contract, and $200.00 during the third year of the contract, for a total of $400.00 during the four year contract term. The state agency can claim $100.00 per employee, per year, in drug testing costs.) The state agency shall disclose the basis for, and methodology utilized, in arriving at its conclusions as to the annual cost for each expense identified as a direct overhead cost.

(F) The hourly cost of indirect overhead costs the state agency would incur if civil service employees were to perform those services to be rendered under the contract. Indirect costs shall not be included unless the cost can be attributed solely to the function in question and would not exist if that function were not performed in state service.

(i) For purposes of this section, indirect overhead costs shall be itemized and include, but not be limited to, the following: the pro rata share of existing administrative salaries and benefits (including managers who do not directly supervise the civil service employees performing those services to be rendered under the contract, human resources staff who process the recruitment, hiring, and separation of the civil service employees performing those services to be rendered under the contract, and executive management staff who have oversight of the program(s) impacted by the contract), rent, utilities, equipment costs and materials. For purposes of this section, hourly indirect overhead costs shall be derived by calculating the annual pro rata cost per employee for each specified indirect overhead cost incurred as a result of the agency performing those services to be rendered under the contract, divided by the number of hours each employee is employed on an annual basis. The state agency shall also disclose the basis for, and methodology utilized, in arriving at its conclusions as to the annual cost for each specified indirect overhead cost;

(G) The total hourly cost, based on those costs set forth in subdivisions (C) through (F), the state agency would incur for each civil service employee, if civil service employees were to perform those services to be rendered under the contract.

(H) A statement explaining why existing civil service employees cannot be re–directed or otherwise utilized to perform those services to be rendered under the contract.

(3) The following information with respect to the contract employees who are to perform the services to be rendered under the contract:

(A) The number of employees required to perform each of the services to be rendered under the contract;

(B) The number of hours each employee shall perform services under the contract;

(C) The base hourly wage that will be paid to each contract employee performing a function under the contract that would otherwise be performed by the civil service.

(i) The contractor shall verify that the cost of any employee benefits, as set forth in section (b)(3)(D), direct overhead costs, as set forth in section (b)(3)(E), or any other costs incurred by the contractor, shall not be included in the base hourly wage calculation, unless specifically authorized by this section. The contractor shall also verify that it is in compliance with all applicable state and federal labor laws;

(ii) The cost of any recruitment or retention pay bonus or differential, or any geographic pay bonus or differential, that the contractor is required to pay to employ private employees to perform those services to be rendered under the contract, shall be calculated as part of the base hourly wage. If the bonus or differential is disbursed as a lump payment, the cost of the bonus or differential shall be amortized over the term of the proposed contract. The cost of any remuneration paid to an employee due to the employee possessing specialized skills or abilities (e.g., bilingual verbal and written skills), shall not be included as part of the base hourly wage, unless the specialized skill or ability is a prerequisite to perform those services to be rendered under the contract. The state agency shall provide detailed, factual information concerning its assertion that the contractor is required to pay any recruitment or retention pay bonus or differential, or any geographic pay bonus or differential, or that the contractor incurs any additional costs to compensate individuals with specialized skills or abilities, in order to employ private employees to perform those services to be rendered under the contract.

(D) The hourly cost of employee benefits that will be provided to each contract employee.

(i) For those proposed contracts not subject to the provisions of Government Code section 19134, employee benefits shall be itemized and limited as set forth in section (b)(2)(D)(i), supra;

(ii) For those proposed contracts subject to the provisions of Government Code section 19134, hourly benefit costs shall be established as set forth in Section (b)(2)(D)(ii), supra;

(iii) Pursuant to Government Code section 19134, subdivision (d), if, in lieu of providing actual benefits as listed in subdivision (b)(3)(D)(i) of this section, the private contractor intends to provide a cash equivalent, the amount of the cash equivalent shall be equal to the applicable determination under subdivision (b)(3)(D)(ii) of this section;

(E) The hourly cost of direct overhead costs the private contractor will incur for each employee employed under the contract.

(i) For purposes of this section, direct overhead costs shall be itemized and include, but not be limited to, those items set forth in Section (b)(2)(E)(i) and (ii), supra;

(F) The total hourly amount the private contractor will charge the state agency for each contract employee to perform those services to be rendered under the contract.

(G) The annual costs the state agency will incur for activities related to inspection, supervision and monitoring activities to ensure proper administration of the contract. Inspection, supervision, and monitoring costs shall include, but not be limited to, the pro rata share of existing administrative salaries and benefits necessary for supervising and monitoring the contract, including costs associated with personnel supervision, invoice review, and the contract bidding process. Inspection, supervision and monitoring costs shall also include additional security or other risk costs incurred by the agency as a result of the contract. The state agency shall disclose the basis for, and methodology utilized, in arriving at its conclusions as to the annual contract inspection, supervision and monitoring costs, and specify the number of hours expended annually by agency staff, on a position–by–position basis, on contract inspection, supervision and monitoring duties. If no costs are claimed for oversight, the state agency shall provide the factual basis for its assertion;

(4) The industry level hourly wage for those services to be rendered under the contract. The term "industry level hourly wage " as used in this section means the prevailing hourly rate of pay for the type of work in question in the local area where the contract would be let, as measured by reliable and statistically representative wage surveys such as those conducted by the Department of Industrial Relations or the Bureau of Labor Statistics. In the event that the most recent relevant wage survey data published by the Department of Industrial Relations differs from the wage survey data published by the Bureau of Labor Statistics, the board shall rely upon the wage survey data published by the Department of Industrial Relations, unless the wage survey data published by the Bureau of Labor Statistics is based on more recent information. The state agency shall identify the wage survey utilized and the date it was issued, and shall specify whether the wage is calculated in terms of mean or median wage.

(5) That the contract will not result in the displacement of civil service employees.

(A) For purposes of this section, displacement shall be limited to: layoff; involuntary demotion; involuntary transfer to a new class; involuntary transfer to a new location requiring a change of residence, and as defined in Department of Personnel dministration regulations; and time base reductions. Displacement does not include: changes in shifts or days off; reassignment to other positions within the same class and general geographic location;

(6) That the contract will not have an adverse impact on State Equal Employment Opportunity efforts, as set forth in Section 547.74;

(7) That the contract was awarded through a publicized, competitive bidding process;

(8) That the contract includes specific provisions pertaining to the qualifications of the staff who will perform each aspect of the work under the contract, as well as assurances that the contractor's hiring practices meet applicable nondiscrimination standards;

(9) That the potential for future economic risk to the state from potential contractor rate increases is minimal.

(10) That the contract is with a firm.

(A) A firm means a corporation, partnership, nonprofit organization, or sole proprietorship; and

(11) That the potential economic advantage of contracting is not outweighed by the public's interest in having a particular function performed directly by the state government.

(12) The state agency shall submit documentary evidence and/or declarations in support of the information provided by the state agency in accordance with the requirements of subsections (2) through (11).

(c) The board shall, within 5 days of receipt of the Notice of Intent to Execute Personal Services contract, forward a copy of the Notice to the employee organization(s) that represent(s) those civil service employees who would otherwise perform those duties to be rendered under the contract.

NOTE: Authority cited: Sections 18211, 18216 and 18701, Government Code. Reference: Sections 18670, 19130, 19131 and 19134, Government Code; and Section 10337, Public Contract Code.

HISTORY

1. Change without regulatory effect adding new article 5 (sections 547.69–547.71) and renumbering former section 279.2 to section 547.69 filed 12–1–99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 49).
2. Change without regulatory effect renumbering former article 5 heading to article 6 filed 2–7–2000 pursuant to section 100, title 1, California Code of Regulations (Register 2000, No. 6).
3. Amendment of article heading, renumbering of former section 547.69 to section 547.72 and new section 547.69 filed 1–3–2008; operative 2–2–2008 (Register 2008, No. 1).

§ 547.70. Employee Organization's Request for Review.

(a) Any employee organization that receives notification from the board, pursuant to Government Code section 19131, of a state agency's

Notice of Intent to Execute Personal Services contract shall, within 15 days of the date of such notice having been mailed to the employee organization, be entitled to file with the board and to serve upon the state agency, a request for review of the contract for compliance with the requirements of Government Code section 19130(a). The employee organization's request for review shall identify the contract to be reviewed and include the following:

(1) Specific and detailed factual information that demonstrates how the contract fails to meet the conditions specified in Government Code section 19130(a); and

(2) Documentary evidence and/or declarations in support of the employee organization's position.

(b) The employee organization shall file a proof of service with the board that states when and how it served a copy of its request for review upon the state agency.

NOTE: Authority cited: Sections 18211, 18216 and 18701, Government Code. Reference: Sections 18670, 19130, 19131 and 19134, Government Code; and Section 10337, Public Contract Code.

HISTORY

1. Change without regulatory effect renumbering and amending former section 279.3 to section 547.70 filed 12–1–99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 49).
2. Renumbering of former section 547.70 to section 547.74 and new section 547.70 filed 1–3–2008; operative 2–2–2008 (Register 2008, No. 1).

§ 547.71. State Agency Reply.

(a) Within 10 days after receipt of service of the employee organization's request for review, the state agency may file with the board and serve upon the employee organization and the proposed contractor(s) a written reply to the employee organization's request.

(b) The state agency shall file a proof of service with the board that states when and how it served a copy of its reply upon the employee organization and the proposed contractor(s).

NOTE: Authority cited: Sections 18211, 18216 and 18701, Government Code. Reference: Sections 18670, 19130, 19131 and 19134, Government Code; and Section 10337, Public Contract Code.

HISTORY

1. Change without regulatory effect renumbering and amending former section 279.4 to section 547.71 filed 12–1–99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 49).
2. Renumbering of former section 547.71 to section 547.73 and new section 547.71 filed 1–3–2008; operative 2–2–2008 (Register 2008, No. 1).

§ 547.72. Undercut of State's Wage in Cost–Savings Based Contracts.

When a Personal Services Contract is based on cost savings, a contractor's wages shall be at or above the industry's level and shall not undercut the State's pay rate for comparable work by more than 15%, except that if in a nonmetropolitan area of the State the contractor's rate of pay is more than 15% below the state rate, the contract may be approved if the contractors rate of pay is closer to the State rate than it is to the comparable industry rate in the local area. In no case shall a contractor's wages be more than 25% below the State's pay rate. Comparison of wages for this purpose shall not include the cost of benefits.

(a) Comparison of the contractor's and State's hourly rates will be made as follows:

(1) For contracts of one year or less duration, comparison shall be to the first step of the salary range of the class designated as the type of work performed by the Personal Services Contract except for classes with a special in–grade salary adjustment (SISA). In this case, comparison shall be made to the midpoint between the first and second steps.

(2) For contracts with durations of over one year up to two years, comparison shall be to the midpoint between the first and second steps of the salary range of the class designated as the type of work performed by Personal Services Contract except for classes with a SISA. Comparison in this case shall be made to the second step.

(3) For contracts with durations of over two years, comparison shall be to the second step of the salary range of the class designated as the type of work performed by Personal Services Contract.

(b) Cost–savings based Personal Services Contracts with duration of more than one year shall contain a clause indicating that in the event of an increase in the State's pay rates, the contractor's wage rate will be reviewed and adjusted in subsequent years of the contract so as not to exceed the relationship with State and industry rates identified in the first paragraph of this section.

(c) The term "industry rate" as used in this section means the prevailing hourly rate of pay for the type of work in question in the local area where the contract would be let, as measured by reliable and statistically representative wage surveys such as those conducted by the Bureau of Labor Statistics or the Department of Industrial Relations. In the event that the most recent relevant wage survey data published by the Department of Industrial Relations differs from the wage survey data published by the Bureau of Labor Statistics, the board shall rely upon the wage survey data published by the Department of Industrial Relations, unless the wage survey data published by the Bureau of Labor Statistics is based on more recent information.

NOTE: Authority cited: Sections 18211, 18216 and 18701, Government Code. Reference: Section 19130(a)(2), Government Code.

HISTORY

1. Renumbering of former section 547.69 to section 547.72, including amendment of subsection (c) and NOTE, filed 1–3–2008; operative 2–2–2008 (Register 2008, No. 1).

§ 547.73. Amount of Savings

(a) Savings generated through cost–savings based personal services contracting must justify the size and duration of the contracting agreement. To do so, such contracts must meet one of the following criteria:

(1) Achieve a savings of 10% or more compared to the cost of performing the same function within the civil service over the duration of the contract; or

(2) Achieve a savings of at least $50,000, in terms of 1988 dollars, per year compared to the cost of performing the same function within the civil service over the duration of the contract, provided that the savings equal at least 5% of the comparable civil service cost. The $50,000 standard shall be adjusted at the beginning of each fiscal year to reflect changes in the California Consumer Price Index as reported by the Department of Industrial Relations, and the adjusted figure shall be communicated by Board staff to all departments.

(b) Such savings need not be attained during each year of a multiyear contract, providing the overall savings meet one of the aforestated requirements.

NOTE: Authority cited: Sections 18211, 18216 and 18701, Government Code. Reference: Sections 19130(a)(5) and 19130(a)(6), Government Code.

HISTORY

1. Renumbering of former section 547.71 to section 547.73, including amendment of NOTE, filed 1–3–2008; operative 2–2–2008 (Register 2008, No. 1).

§ 547.74. Equal Employment Opportunity Impact.

No state agency may enter into a cost savings contract under Section 19130, subdivision (a) unless the agency can establish:

(a) Approval of the contract will not unreasonably interfere with the ability of the agency to comply with its equal employment opportunity plan; and

(b) The contractor is in compliance with the statutes and regulations administered by the Department of Fair Employment and Housing.

NOTE: Authority cited: Sections 18211, 18216 and 18701, Government Code. Reference: Sections 11135–11139.8, 19130(a)(4), 19130(a)(8), 19790, 19791, 19793, 19794, 19797 and 19798.5, Government Code; and Section 1431, Labor Code.

HISTORY

1. Renumbering of former section 547.70 to section 547.74, including amendment of section heading, repealer and new section and amendment of NOTE, filed 1–3–2008; operative 2–2–2008 (Register 2008, No. 1).

Subchapter 1.7. Equal Employment Opportunity Program

Article 1. State Work Force Data Collection and Evaluation

§ 547.80. Definitions.

The following definitions shall be used for work force data collection and evaluation of equal employment opportunity within state civil service, including those activities related to layoff:

(a) "Class" means a group of positions as defined in Government Code Section 18523.

(b) "Racial/Ethnic Group" includes persons who are members of one of the following groups: American Indian/Native American, Asian, Black/African American, Filipino, Hispanic, Pacific Islander, and White. These groups are defined as follows:

(1) "American Indian/Native American" means any person who is a member of an American Indian Tribe or band recognized by the Federal Bureau of Indian Affairs, or has at least one–quarter American Indian blood quantum of tribes or bands indigenous to the United States or Canada.

(2) "Asian" means any person whose origin is the Far East, Southeast Asian or the Indian subcontinent and includes, for example, China, Japan, and Korea.

(3) "Black/African American" means any person whose origin is any of the Black racial groups of Africa.

(4) "Filipino" means any person whose origin is the Philippine Islands.

(5) "Hispanic" means any person whose origin is Mexico, Puerto Rico, Cuba, Spain, or the Spanish–speaking countries of Central or South America. It does not include persons of Portuguese or Brazilian origin, or persons who acquired a Spanish surname;

(6) "Pacific Islander" means any person whose origin is in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.

(7) "White" means any person whose origin is Caucasoid.

(c) "Occupational Group" means a group of jobs or classes that includes the entry level, other working levels, and supervisory levels within the same general occupational field of work;

(d) "Relevant Labor Force" means the pool of individuals who possess the requisite qualifications for the job within the geographic area in which the agency can reasonably expect to recruit.

(e) "Statistically Significant" means the degree of underutilization is equal to or greater than the .05 level of significance using the one–tailed Z Test method of statistical analysis outlined in Appendix 4 of the *Interim Guidelines for Conducting the Annual Analysis of the State Work Force*, issued March 2002, by the State Personnel Board. This document is hereby incorporated by reference in its entirety. Using this methodology, a computed Z value of 1.65 or greater is sufficient to conclude that any underutilization is statistically significant.

(f) "Underutilization" means having fewer persons of a particular group in an occupation or at a level in a department than would reasonably be expected by their availability in the relevant labor force.

(g) "Work Force" means incumbents in full–time and other–than–full–time positions in the state civil service employed by the appointing authority.

NOTE: Authority cited: Section 18701, Government Code. Reference: Sections 11092.5, 18523, 19702.1, 19790, 19791 and 19792, Government Code; Title VII of the Civil Rights Act of 1964, 42 USC, Sections 2000e–2 et seq.; "Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity," *Federal Register*, October 30, 1997; *Connerly v. State Personnel Bd.* (2001) 92 Cal. App. 4th 16; and *Hazelwood School District v. United States* (1977), 433 U.S. 299, 308, fn. 14.

HISTORY

1. New subchapter 1.7, article 1 (sections 547.80–547.81) and section filed 9–25–2000; operative 9–25–2000 (Register 2000, No. 39). This regulatory action was subject to limited review by OAL and is exempt from those provisions of the Administrative Procedure Act specified in section 18215(b) of the Government Code.
2. Amendment of subchapter heading, article heading, section and NOTE filed 5–7–2003 subject to partial compliance with the Administrative Procedure Act and limited review by the Office of Administrative Law pursuant to Government Code section 18215; effective on filing pursuant to Government Code section 11343.4 (Register 2003, No. 19).

§ 547.81. Establishment of Annual Equal Employment Opportunity Goals for Minorities and Women.

NOTE: Authority cited: Section 18701, Government Code. Reference: Sections 11092.5, 19702.1 and 19790, Government Code; Title VII of the Civil Rights Act of 1964, 42 USC, Sections 2000e–2 et seq.; *Wygant v. Jackson Board of Education*, 476 U.S. 267 (1986); *Johnson v. Santa Clara Transportation Agency*, 480 U.S. 616 (1987); and *Wards Cove Packing Co. v. Atonio*, 490 U.S. 642 (1989).

HISTORY

1. New section filed 9–25–2000; operative 9–25–2000 (Register 2000, No. 39). This regulatory action was subject to limited review by OAL and is exempt from those provisions of the Administrative Procedure Act specified in section 18215(b) of the Government Code.
2. Repealer filed 5–7–2003 subject to partial compliance with the Administrative Procedure Act and limited review by the Office of Administrative Law pursuant to Government Code section 18215; effective on filing pursuant to Government Code section 11343.4 (Register 2003, No. 19).

Subchapter 1.8. Upward Mobility

Article 1. Definitions

§ 547.82. Definitions.

For purposes of this Subchapter:

(a) "Bridging Career Ladders" and "Career Ladders and Lattices" mean the succession of job classifications in which employees may normally gain experience in order to advance from positions in low–paying occupations into technical, professional, or administrative positions.

(b) "Bridging Classifications" mean job classifications established to provide experience for employees in low–paying occupations that meets the minimum qualifications for traditional entry technical, professional, and administrative classifications.

(c) "Career Development Plan" means an employee's written plan for advancement, which identifies a career goal and the specific self–development actions, including, but not limited to, work experiences, college courses, and training classes, needed to achieve the goal.

(d) "Entry Technical, Professional, and Administrative Positions" mean those positions in technical, professional, and administrative classifications for which hiring is typically open to the public and into which employees in low–paying occupations may advance.

(e) "Good Faith Effort" means that the department can demonstrate by its actions that it is fully complying with all upward mobility statutes and regulations.

(f) "Low–Paying Occupations" mean the following groups of classifications identified in the *California Civil Service Pay Scales* (Pay Scales), 50th Edition, as published by the California Department of Personnel Administration: Horticulture; Office and Allied Services; Custodian and Domestic Services; Mechanical and Construction Trades; and bridging and career development classifications in other occupational areas.

(g) "Technical, Professional, and Administrative Classifications" mean classifications in the following occupational categories identified in the Pay Scales: Agriculture and Conservation; Education and Library; Engineering and Allied Services; Fiscal, Management and Staff Services; Legal; Medicine and Allied Services; State Emergency Disaster Program; Protective Services and Public Safety; and Social Security and Rehabilitation Services.

(h) "Upward Mobility" means the development and advancement of employees from positions in low–paying occupations to entry technical, professional, and administrative positions.

NOTE: Authority cited: Section 18701, Government Code. Reference: Sections 19400–19403, 19405 and 19406, Government Code.

HISTORY

1. New subchapter 1.8 (articles 1–2, sections 547.82–547.87) article 1 (section 547.82) and section filed 12–21–2000; operative 12–21–2000 pursuant to Government Code section 18214 (Register 2000, No. 51).

Article 2. Upward Mobility Program Plans, Goals, and Related Procedures

§ 547.83. Coordinator.

Each department shall appoint an upward mobility program coordinator to coordinate, monitor, and report on the department's upward mobility program efforts.

NOTE: Authority cited: Section 18701, Government Code. Reference: Sections 19400–19403, 19405 and 19406, Government Code.

HISTORY

1. New article 2 (sections 547.83–547.87) and section filed 12–21–2000; operative 12–21–2000 pursuant to Government Code section 18214 (Register 2000, No. 51).

§ 547.84. Plan Elements.

Each department shall develop and maintain a written upward mobility plan as specified in the State Personnel Board's *Guidelines for Administering Departmental Upward Mobility Employment Programs* (Guidelines), revised July 25, 2000. This document is hereby incorporated by reference in its entirety. The plan shall include:

(a) A policy statement regarding the department's commitment to providing equal upward mobility opportunity for its employees in low–paying occupations.

(b) A description of the components of its program consistent with Government Code Section 19401, how employees may access the program, and where information about the program may be obtained.

(c) The roles and responsibilities of the employee, the employee's supervisor, the upward mobility program coordinator, the personnel office, the training office, and the equal employment opportunity office regarding the upward mobility program.

(d) Criteria for selecting employees in low–paying occupations to participate in the upward mobility efforts described in Government Code Section 19401.

(e) The number of employees in classifications in low–paying occupations used by the department; career ladders, bridging classes, and entry technical, professional, and administrative classes targeted for upward mobility; and planned upward mobility examinations.

NOTE: Authority cited: Section 18701, Government Code. Reference: Sections 19400–19403, 19405 and 19406, Government Code.

HISTORY

1. New section filed 12–21–2000; operative 12–21–2000 pursuant to Government Code section 18214 (Register 2000, No. 51).

§ 547.85. Employee Selection.

(a) Departments shall conspicuously post and otherwise publicize upward mobility development and job opportunities for a reasonable time period, but not less than five working days, to provide an equal opportunity for interested employees in low–paying occupations to apply.

(b) Departments shall select employees in low–paying occupations for participation in upward mobility activities using criteria that are as objective as possible and that can be applied in a consistent manner. Criteria shall include, but not be limited to, such factors as upward mobility objectives; staffing needs; available funds and other resources; employee status; employee performance in current position; employee motivation and potential for advancement; and the relevance of the training.

(c) No employee shall be guaranteed advancement under any departmental upward mobility program, but all interested employees in low–paying occupations shall be given equal consideration to participate in upward mobility efforts. Employees selected for upward mobility efforts shall prepare a career development plan and maintain a satisfactory level of performance on the job, in academic courses, and/or in training programs to continue in the program.

NOTE: Authority cited: Section 18701, Government Code. Reference: Sections 19400–19403, 19405 and 19406, Government Code.

HISTORY

1. New section filed 12–21–2000; operative 12–21–2000 pursuant to Government Code section 18214 (Register 2000, No. 51).

§ 547.86. Upward Mobility Goals.

(a) In accordance with the Guidelines, each department shall annually establish upward mobility goals that reflect the number of expected appointments of employees in low–paying occupations to positions in entry technical, professional, and administrative classifications during the fiscal year. Goals shall be established by classification and expressed as a whole number. In establishing goals, consideration shall be given to the following:

(1) The history of upward mobility appointments over at least a three–year period.

(2) The anticipated number of appointment opportunities.

(3) The availability of qualified upward mobility candidates for appointment.

(b) Departments shall submit the following information to the Board for review and approval by July 1st of each year:

(1) Upward mobility goals for each appropriate entry technical, professional and administrative classification.

(2) An analysis of how successful the department was in meeting its goals for the previous year.

(3) A description of the department's actions that demonstrate a good faith effort to comply with the requirements of Government Code Section 19401.

(4) The number of employees participating in each of the department's upward mobility efforts specified in Government Code Section 19401.

(5) The amount and percentage of the department's annual training budget assigned for upward mobility development activities.

NOTE: Authority cited: Section 18701, Government Code. Reference: Sections 19400–19403, 19405 and 19406, Government Code.

HISTORY

1. New section filed 12–21–2000; operative 12–21–2000 pursuant to Government Code section 18214 (Register 2000, No. 51).

§ 547.87. Board Review and Response.

In accordance with Government Code Section 19402, the board will annually review each department's upward mobility goals and the other information required under Section 547.86 and provide a written response either approving or requiring modification to the department's upward mobility program.

NOTE: Authority cited: Section 18701, Government Code. Reference: Sections 19400–19403, 19405 and 19406, Government Code.

HISTORY

1. New section filed 12–21–2000; operative 12–21–2000 pursuant to Government Code section 18214 (Register 2000, No. 51).

Subchapter 2. Career Executive Assignment Rules

PREFATORY NOTE

Articles 1–16, inclusive, are promulgated under the authority of Section 18701, Government Code, unless otherwise stated.

Article 1. General

§ 548. Scope.

This chapter shall have special reference to the category of civil service appointment called "career executive assignments." Except as may be included in these regulations by specific reference, Chapters 3 through 8 of Part 2 of the Civil Service Act and the regulations stemming from this authority do not apply to this category. Regulations adopted by the State Personnel Board under the provisions of the Government Code applicable to career executive assignments shall apply to such assignments.

NOTE: Authority cited: Section 19889, Government Code. Reference: Sections 18546, 18547, 19889, 19889.2 and 19889.3, Government Code.

HISTORY

1. New subchapter 2 (sections 548 through 548.145) filed 10–15–63; effective thirtieth day thereafter (Register 63, No. 18).
2. Amendment of NOTE filed 4–8–77; effective thirtieth day thereafter (Register 77, No. 15).
3. Change without regulatory effect amending section and NOTE filed 9–16–92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 39).

§ 548.1. Purpose.

It is the purpose of these regulations to establish a system of merit personnel administration which will further the development, selection, and effective use of career executives in the California state civil service. They are general in nature and are intended to facilitate the multi–departmental and service wide procedures which recognize and afford opportunity to the most competent. Responsibility rests upon appointing powers, competitors and the Personnel Board alike to be sure that all actions under these regulations conform to the intent and goals of this program.

NOTE: Authority cited: Section 19889, Government Code. Reference: Section 19889, Government Code.

HISTORY

1. Amendment filed 12–21–73; designated effective 4–1–74 (Register 73, No. 51).
2. Change without regulatory effect amending section and adding NOTE filed 9–16–92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 39).

Article 2. Position Assignment

§ 548.5. Career Executive Assignment Category.

HISTORY

1. Amendment filed 12–21–73; designated effective 4–1–74 (Register 73, No. 51).
2. Repealer filed 6–12–86; effective thirtieth day thereafter (Register 86, No. 24).

§ 548.6. Reporting New Positions or Duty Changes.

HISTORY

1. Amendment filed 12–21–73; designated effective 4–1–74 (Register 73, No. 51).
2. Repealer filed 6–12–86; effective thirtieth day thereafter (Register 86, No. 24).

§ 548.7. Use of Code Symbol.

HISTORY

1. Amendment filed 12–21–73; designated effective 4–1–74 (Register 73, No. 51).
2. Repealer filed 9–18–85; effective thirtieth day thereafter (Register 85, No. 40).

[The next page is 41.]

Article 3. Compensation

§ 548.20. Salary Ranges.

HISTORY

1. Amendment filed 12–21–73; designated effective 4–1–74 (Register 73, No. 51).

§ 548.22. Flexibility in Form of Compensation.

HISTORY

1. New section filed 9–27–65; effective thirtieth day thereafter (Register 65, No. 18).
2. Amendment filed 12–21–73; designated effective 4–1–74 (Register 73, No. 51).
3. Repealer filed 8–28–85; effective thirtieth day thereafter (Register 85, No. 35).

§ 548.23. Rate of Movement Upon Promotion to a Career Executive Assignment Position.

HISTORY

1. New section filed 7–3–73; effective thirtieth day thereafter (Register 73, No. 31).
2. Amendment filed 12–21–73; designated effective 4–1–74 (Register 73, No. 51).
3. Amendment filed 4–8–77; effective thirtieth day thereafter (Register 77, No. 15).
4. Repealer filed 8–28–85; effective thirtieth day thereafter (Register 85, No. 35).

§ 548.24. Bonus Compensation.

HISTORY

1. New section filed 7–31–73; effective thirtieth day thereafter (Register 73, No. 31).
2. Amendment filed 12–21–73; designated effective 4–1–74 (Register 73, No. 51).
3. Repealer filed 8–28–85; effective thirtieth day thereafter (Register No. 35).

§ 548.25. Red Circle Rates.

NOTE: Reference: Sections 18860 and 19221, Government Code.

HISTORY

1. New section filed 5–21–76; effective thirtieth day thereafter (Register 76, No. 21).
2. Amendment of NOTE filed 4–8–77; effective thirtieth day thereafter (Register 77, No. 15).
3. Repealer filed 8–28–85; effective thirtieth day thereafter (Register 85, No. 35).

Article 4. Employment Lists

§ 548.30. Career Executive Assignment Examinations.

The appointing power may conduct competitive examinations subject to these regulations and the approval of the executive officer. The results of an examination may be used to make additional appointments to Career Executive Assignment positions that are substantially the same as the one for which the original examination was announced. However, the eligibility of persons for appointment to such positions shall be subject to either,

(a) The appointing power specifying in the announcement for the original examination the additional positions for which the competition shall be used to make appointments, the methods and standards of evaluation to be used in the examination, and the time for which the results of the original competition shall be used; or

(b) The appointing power subsequently announcing that applications will be accepted as a supplement to the original announcement and that all otherwise qualified persons who apply will be considered with those who applied under the original announcement.

Lists of persons who apply for announced examinations shall be maintained by the appointing power as long as the results of the competition are to be used. These lists shall be kept for the purpose of facilitating future competition by reducing the need for repetitive evaluation and for the purpose of providing a record of the results of competitive examinations. Such lists of persons who apply and are evaluated for consideration for appointment shall not confer eligibility for appointment to other positions in the Career Executive Assignment category which are not among those provided for in this section.

NOTE: Authority cited: Section 18701, Government Code. Reference: Sections 18546, 19889, 19889.2 and 19889.3, Government Code.

HISTORY

1. Amendment filed 12–21–73; designated effective 4–1–74 (Register 73, No. 51).
2. Amendment filed 8–14–79; effective thirtieth day thereafter (Register 79, No. 33).
3. Amendment filed 9–18–85; effective thirtieth day thereafter (Register 85, No. 40).
4. Change without regulatory effect amending opening paragraph and NOTE filed 9–16–92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 39).

§ 548.32. Roster Merging.

NOTE: Authority cited: Section 18701, Government Code. Reference: Sections 18930, 18546, 19221 and 19222, Government Code.

HISTORY

1. Amendment filed 12–21–73; designated effective 4–1–74 (Register 73, No. 51).
2. Repealer filed 8–14–79; effective thirtieth day thereafter (Register 79, No. 33).

Article 5. Examinations

§ 548.40. Competitive Examinations.

Examinations for appointment to Career Executive Assignment positions shall be competitive and of such a character as fairly to test and determine the qualifications of candidates actually to perform the duties of the position to be filled. Examinations may include, but need not be limited to, an assessment of the candidates' character, education, experience, knowledge, skills, and ability. Examinations may be assembled or unassembled, written or oral, or in the form of a demonstration of skill, or any combination of these.

Examinations may include a review of applications, use of supplemental applications, appraisals of performance and executive potential, management exercises, and/or structured interviews.

The appointing power shall promulgate the job–related evaluation criteria that will be used to assess the qualifications of each candidate for the position. The appointing power shall assess each candidate's qualifications for the position based upon the evaluation criteria, and shall compare and rank each candidate against all other candidates based upon this assessment. Successful candidates shall be divided into 6 ranks based upon their scores. The first rank shall consist of candidates who receive scores of 95 percent or higher. The second rank shall consist of candidates who receive scores of 90 to 94 percent. The third rank shall consist of candidates who receive scores of 85 to 89 percent. The fourth rank shall consist of candidates who receive scores of 80 to 84 percent. The fifth rank shall consist of candidates who receive scores of 75 to 79 percent. The sixth rank shall consist of candidates who receive scores of 70 to 74 percent. Unsuccessful candidates shall receive a score of 65. All examination scores shall be rounded to the nearest whole percent. Each candidate shall be notified in writing of his or her score.

The appointing power shall appoint a candidate who is well–qualified to perform the duties of the position, and who is within one of the top three ranks. If there are fewer than a total of 5 candidates in the top three ranks, then the appointing power may consider candidates in the next lower ranks in rank order until there are at least 5 candidates available for consideration. For each examination, the appointing power shall maintain an examination file for a period of three years that includes, but is not limited to, the specific job–related evaluation criteria and selection procedures that were used in the examination; documentation on how those criteria were applied to the candidates; documentation as to the competitiveness of the candidates' qualifications relative to each other; and the appointing power's rationale for selecting the successful candidate.

NOTE: Authority cited: Section 18701, Government Code. Reference: Sections 18546, 19889, 19889.2 and 19889.3, Government Code; and *Alexander v. State Personnel Board* (2000) 80 Cal.App.4th 526.

HISTORY

1. Amendment filed 12–21–73; designated effective 4–1–74 (Register 73, No. 51).
2. Amendment filed 8–14–79; effective thirtieth day thereafter (Register 79, No. 33).
3. Change without regulatory effect amending NOTE filed 9–16–92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 39).
4. Amendment of section and NOTE filed 10–23–2000; operative 10–23–2000; amended and refiled 12–6–2000. Submitted to OAL for printing only pursuant to Government Code sections 18211 and 18213(a) (Register 2000, No. 49).

§ 548.41. Examination Announcements.

It is the policy of the State Personnel Board that examinations for appointment to Career Executive Assignment positions shall be publicized as widely as appears practicable. When it is in the best interest of the State and of economy and efficiency, examinations may be conducted with restricted publicity subject to the approval of the executive officer. The executive officer may authorize appointing powers to prepare and distribute examination announcements, to conduct examinations for Career Executive Assignment appointments, and to establish standards for the review and interpretation of such minimum qualifications as the board may establish for the Career Executive Assignment category. Such interpretive standards shall be expressed on the examination announcement as desirable knowledge, skills, abilities, or personal characteristics that are actually necessary to perform the duties of the position to be filled. Specific amounts, kinds and levels of education and experience shall not be required but may be indicated as desirable and as the most likely sources of the requisite knowledges, skills, abilities and personal characteristics. Examination announcements shall identify the position for which the competition is being conducted and the evaluation standards and methods to be applied. If the results of the examination may be used to make additional appointments, the announcement shall conform to the provisions of Article 4 of these regulations on employment lists. The appointing power shall provide information on the content and scope of the examination publicity and on the methods and results of the evaluation used on forms and by procedures prescribed by the executive officer. When examinations are announced there shall be reasonable assurance that potential competitors are provided opportunity to be informed of their general nature and scope.

NOTE: Authority cited: Section 18701, Government Code. Reference: Sections 18935, 18546, 19889, 19889.2 and 19889.3, Government Code.

HISTORY

1. Amendment filed 8–14–79; effective thirtieth day thereafter (Register 79, No. 33).
2. Change without regulatory effect amending section and NOTE filed 9–16–92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 39).

§ 548.42. Refusal to Examine or Approve Appointments.

The executive officer may refuse to examine or to approve appointments to the Career Executive Assignment category for any reason specified in Government Code Section 18935.

NOTE: Authority cited: Section 18701, Government Code. Reference: Sections 19889, 19889.2 and 19889.3, Government Code.

HISTORY

1. Amendment filed 12–21–73; designated effective 4–1–74 (Register 73, No. 51).
2. Amendment filed 8–14–79; effective thirtieth day thereafter (Register 76, No. 33).
3. Change without regulatory effect amending NOTE filed 9–16–92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 39).

§ 548.43. Availability of Information on Examination Method.

The method or methods by which the appointing power conducted the competitive examination for appointment shall be available for the information of competitors upon request.

NOTE: Authority cited: Section 18701, Government Code. Reference: Sections 19889, 19889.2 and 19889.3, Government Code.

HISTORY

1. Amendment filed 8–14–79; effective thirtieth day thereafter (Register 79, No. 33).
2. Change without regulatory effect amending NOTE filed 9–16–92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 39).

§ 548.44. Security Measures.

The same security precautions shall be observed in preparing and conducting examinations for Career Executive Assignment positions as are required in the preparation and conduct of other examination processes. Competitors likewise shall be bound by the same prohibitions and penalties applying to competitors in other examinations.

NOTE: Authority cited: Section 18701, Government Code. Reference: Sections 19889, 19889.2 and 19889.3, Government Code.

HISTORY

1. Amendment filed 12–21–73; designated effective 4–1–74 (Register 73, No. 51).
2. Amendment filed 8–14–79; effective thirtieth day thereafter (Register 79, No. 33).
3. Change without regulatory effect amending NOTE filed 9–16–92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 39).

§ 548.45. Inspection of Examination Papers and Executive Assessment and Potential Ratings.

NOTE: Authority cited: Section 18701, Government Code. Reference: Sections 19220 and 19221, Government Code.

HISTORY

1. Amendment filed 12–21–73; designated effective 4–1–74 (Register 73, No. 51).
2. Repealer filed 8–14–79; effective thirtieth day thereafter (Register 79, No. 33).

§ 548.46. Disqualification of Persons Related to Competitor.

Interviewers and evaluators shall be disqualified from Career Executive Assignment examinations in the manner provided by Section 197.5 for examinations for the general civil service.

NOTE: Authority cited: Section 18701, Government Code. Reference: Sections 18930 and 19889.2, Government Code.

HISTORY

1. Amendment filed 9–18–85; effective thirtieth day thereafter (Register 85, No. 40).
2. Change without regulatory effect amending section and NOTE filed 9–16–92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 39).

§ 548.47. Fitness for Managerial Posts.

Examinations for the Career Executive Assignment appointments shall give due regard to the general fitness of the competitors to serve in managerial posts as evidenced by demonstrated achievement and self development.

NOTE: Authority cited: Section 18701, Government Code. Reference: Sections 19889, 19889.2 and 19889.3, Government Code.

HISTORY

1. Amendment filed 12–21–73; designated effective 4–1–74 (Register 73, No. 51).
2. Amendment filed 8–14–79; effective thirtieth day thereafter (Register 79, No. 33).
3. Change without regulatory effect amending NOTE filed 9–16–92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 39).

§ 548.48. Ratings of Performance and Potential.

In any examination for Career Executive Assignment appointment the executive officer or the appointing power may make such inquiry into the backgrounds of the competitors and obtain such ratings of past performance and potential as will be helpful in determining their fitness to serve in a career executive assignment.

NOTE: Authority cited: Section 18701, Government Code. Reference: Sections 19889, 19889.2 and 19889.3, Government Code.

HISTORY

1. Amendment filed 12–21–73; designated effective 4–1–74 (Register 73, No. 51).
2. Amendment filed 8–14–79; effective thirtieth day thereafter (Register 79, No. 33).
3. Change without regulatory effect amending NOTE filed 9–16–92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 39).
4. Editorial correction of printing error in HISTORY 2. (Register 92, No. 39).

§ 548.49. Appeal From Examination or Departmental Appointment.

Within 30 days after the report of appointment to a Career Executive Assignment position is submitted to the executive officer, and employee who is otherwise eligible for appointment to the C.E.A. category may appeal to the State Personnel Board upon the grounds of irregularity, fraud or discrimination in the conduct of the examination.

If, upon review of the record of the examination, the board grants the appeal by finding fraud or discrimination, it may cancel the examination and appointment and require the appointing power to repeat the competition for the position with specific instructions that will avoid such fraud or discrimination in subsequent competition; it may order whatever corrective action it finds best provides an appropriate remedy.

If an appellant alleges irregularity in the conduct of the examination, the board may cancel the appointment and/or order a new examination only if the board finds the irregularity materially affected the appointment made as a result of the examination.

Appeals based on a challenge of the qualifications of the person appointment made as a result of an examination shall be heard only upon the grounds that such person is not well qualified and/or was not carefully selected.

NOTE: Authority cited: Section 18701, Government Code. Reference: Sections 19889, 19889.2 and 19889.3, Government Code.

HISTORY

1. Amendment filed 12–21–73; designated effective 4–1–74 (Register 73, No. 51).
2. Amendment filed 5–14–75; effective thirtieth day thereafter (Register 75, No. 20).
3. Amendment filed 8–14–79; effective thirtieth day thereafter (Register 79, No. 33).
4. Change without regulatory effect amending section and NOTE filed 9–16–92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 39).

§ 548.50. Expenses.

Expenses for nonsalaried assistants in the preparation and conduct of examinations may be provided as for the general civil service.

NOTE: Authority cited: Section 18701, Government Code. Reference: Section 18546, Government Code.

HISTORY

1. Reinstatement of Section 548.50 which was inadvertently repealed instead of Section 548.5 on 8–28–85 (Register 85, No. 35) filed 6–12–86; effective thirtieth day thereafter (Register 86, No. 24).

§ 548.52. Written Examinations.

The scoring, determination of ratings, inspection of papers or answer sheets, and appeals of the conduct of written examinations shall be administered in the same manner as provided for the general civil service as provided in Sections 176, 177, 178, 179, 180, 185, 186, 187, 188, 189, 190.

NOTE: Authority cited: Section 18701, Government Code. Reference: Sections 19680 and 19899.2, Government Code.

HISTORY

1. New section filed 9–18–85; effective thirtieth day thereafter (Register 85, No. 40).
2. Change without regulatory effect amending section and NOTE filed 9–16–92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 39).

Article 6. Promotion

§ 548.60. Promotional Examination Eligibility.

NOTE: Authority cited: Section 18701, Government Code. Reference: Section 18546, Government Code.

HISTORY

1. Amendment filed 12–21–73; designated effective 4–1–74 (Register 73, No. 51).
2. Reinstatement of Section 548.60 which was inadvertently repealed instead of Section 548.6 on 8–28–85 (Register 85, No. 35) filed 6–12–86; effective thirtieth day thereafter (Register 86, No. 24).
3. Repealer filed 11–20–87; operative 12–20–87 (Register 87, No. 48).

§ 548.61. Rights of Disadvantaged Employee.

An employee who feels disadvantaged by any action taken by any superior or fellow employee in discouraging any manner hindering or preventing the employee from taking any examination or who alleges discrimination in State employment on the basis of age, sex, race, religious creed, color, national origin, ancestry, disability, marital status, or sexual orientation may appeal to the board in writing. Any such appeal or communication in connection therewith is confidential and shall not be disclosed without the consent of the employee taking such appeal. Immediately after receiving such appeal the board shall investigate and shall take such action as it deems necessary.

NOTE: Authority cited: Section 18701, Government Code. Reference: Section 18952, Government Code.

HISTORY

1. Amendment filed 8–28–85; effective thirtieth day thereafter (Register 85, No. 35).

§ 548.62. Resignation of Eligible.

NOTE: Authority cited: Section 18701, Government Code. Reference: Section 19220, 19221 and 19222, Government Code.

HISTORY

1. Amendment filed 12–21–73; designated effective 4–1–74 (Register 73, No. 51).
2. Repealer filed 8–14–79; effective thirtieth day thereafter (Register 79, no. 33).

Article 7. Appointments

§ 548.70. Eligibility for Appointments.

Except as provided in this chapter, eligibility for appointment to a Career Executive Assignment position shall be established as the result of competitive examination of persons with permanent status in the civil service who are well qualified to perform high administrative and policy–influencing functions. The scope and nature of such examinations may be determined by the appointing power subject to these regulations and the approval of the executive officer.

NOTE: Authority cited: Section 18701, Government Code. Reference: Sections 19889, 19889.2 and 19889.3, Government Code.

HISTORY

1. Amendment filed 12–21–73; designated effective 4–1–74 (Register 73, No. 51).
2. Amendment filed 8–14–79; effective thirtieth day thereafter (Register 79, No. 33).
3. Change without regulatory effect amending section and NOTE filed 9–16–92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 39).

§ 548.71. Request for Certification.

NOTE: Authority cited: Section 18701, Government Code. Reference: Sections 19220, 19221 and 19222, Government Code.

HISTORY

1. Amendment filed 8–14–79; effective thirtieth day thereafter (Register 79, No. 33).

§ 548.72. Appropriate Lists.

HISTORY

1. Repealer filed 12–21–73; designated effective 4–1–74 (Register 73, No. 51).

§ 548.73. Categories of Qualification.

NOTE: Authority cited: Section 18701, Government Code. Reference: Sections 19220, 19221 and 19222, Government Code.

HISTORY

1. Amendment filed 12–21–73; designated effective 4–1–74 (Register 73, No. 51).
2. Repealer filed 8–14–79; effective thirtieth day thereafter (Register 79, No. 33).

§ 548.74. Certification of the Roster.

NOTE: Authority cited: Section 18701, Government Code. Reference: Sections 19220, 19221 and 19222, Government Code.

HISTORY

1. Amendment filed 12–21–73; designated effective 4–1–74 (Register 73, No. 51).
2. Repealer filed 8–14–79; effective thirtieth day thereafter (Register 79, No. 33).

§ 548.75. Duty to Respond to Notice.

NOTE: Authority cited: Section 18701, Government Code. Reference: Sections 19220, 19221 and 19222, Government Code.

HISTORY

1. Amendment filed 12–21–73; designated effective 4–1–74 (Register 73, No. 51).
2. Repealer filed 8–14–79; effective thirtieth day thereafter (Register 79, No. 33).

§ 548.76. Waiver of Certification.

NOTE: Authority cited: Section 18701, Government Code. Reference: Sections 19220, 19221 and 19222, Government Code.

HISTORY

1. Repealer filed 8–14–79; effective thirtieth day thereafter (Register 79, No. 33).

§ 548.77. Report of Appointment.

The appointing power shall report of each appointment to the executive officer within 30 days of the effective date of the appointment and on forms and by procedures established by the executive officer.

NOTE: Authority cited: Section 18701, Government Code. Reference: Sections 19889 and 19889.2, Government Code.

HISTORY

1. Amendment filed 8–14–79; effective thirtieth day thereafter (Register 79, No. 33).
2. Change without regulatory effect amending NOTE filed 9–16–92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 39).

Article 8. Reinstatement

§ 548.90. Reinstatement of Employee.

On the request of an appointing power. the executive officer may approve the reinstatement to a career executive assignment of any permanent employee, or an employee who previously had permanent status and who since such permanent status has had no break in the continuity of state service due to a permanent separation, who meets the reinstatement criteria stated in Government Code Section 19140.

The board, by resolution at the request of an appointing power, may approve the establishment of limited career executive assignment positions at levels classified within the general civil service to provide for the reinstatement of persons who are terminated from other career executive assignments. Such reinstatements may be approved only when all of the following conditions are present:

(a) The appointing power has an identified need for the services of the employee at a position at least equal to the highest general civil service classification authorized for use by the appointing power, and the duties and responsibilities of the individual concerned meet the definition of career executive assignment as stated in Government Code Section 18547; and

(b) The employee does not have prior status or employment list eligibility for appointment at this level; and

(c) The reinstatement will not result in a layoff or any other infringements of employees already in this classification.

It is not the intent of this section, nor shall this section provide any implied or expressed precedent authority for the establishment of career executive assignment positions other than those which fully meet the criteria specified in this section.

NOTE: Authority cited: Section 18701, Government Code. Reference: Sections 19889 and 19889.3, Government Code.

HISTORY

1. Amendment filed 11–1–72; effective thirtieth day thereafter (Register 72, No. 45).
2. Amendment filed 12–21–73; designated effective 4–1–74 (Register 73, No. 51).
3. Amendment filed 4–14–77; effective thirtieth day thereafter (Register 77, No. 16).
4. Change without regulatory effect amending subsection (c) and NOTE filed 9–16–92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 39).

§ 548.91. Reinstatement of Former Employee.

HISTORY

1. Amendment filed 11–1–72; effective thirtieth day thereafter (Register 72, No. 45).

§ 548.92. Breaks in Service.

HISTORY

1. Amendment filed 8–28–85; effective thirtieth day thereafter (Register 85, No. 35).

Article 9. Transfer

§ 548.95. Transfer of Employee.

With the approval of the executive officer, an appointing power may transfer an employee from one career executive assignment position to another at substantially the same or lower level of salary. Such transfer or demotions may, with the written approval of all parties, be made between appointing powers. Transfers between positions in different Career Executive Assignment levels and assignments shall be governed by the standards contained in Sections 430, 431, 432, 433 and 435 for transfer between general civil service classifications.

NOTE: Authority cited: Section 18701, Government Code. Reference: Sections 18546, 18547 and 19050.4, Government Code.

HISTORY

1. Amendment filed 12–21–73; designated effective 4–1–74 (Register 73, No. 51).
2. Amendment filed 9–18–85;; effective thirtieth day thereafter (Register 85, No. 40).
3. Change without regulatory effect amending section and NOTE filed 9–16–92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 39).

§ 548.96. Transfer of Employee From General Civil Service to a Career Executive Assignment.

NOTE: Authority cited: Section 18701, Government Code. Reference: Sections 18546, 18547 19889, 19889.2 and 19889.3, Government Code.

HISTORY

1. New section filed 12–21–73; designated effective 4–1–74 (Register 73, No. 51).
2. Amendment of NOTE filed 4–8–77; effective thirtieth day thereafter (Register 77, No. 15).
3. Change without regulatory effect amending section and NOTE filed 9–16–92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 39).
4. Invalidated by *Professional Engineers in California Government v. State Personnel Board* (2001) 90 Cal.App.4th 678, 109 Cal.Rptr.2d 375 and repealer filed 6–20–2002 per section 100(a)(3), title 1 of the California Code of Regulations (Register 2002, No. 25).

Article 10. Performance Appraisal

§ 548.100. Method of Appraisal.

HISTORY

1. Amendment filed 12–21–73; designated effective 4–1–74 (Register 73, No. 51).
2. Repealer filed 8–28–85; effective thirtieth day thereafter (Register 85, No. 35).

Article 11. Absences

§ 548.110. Leave of Absence.

HISTORY

1. Repealer filed 8–28–85; effective thirtieth day thereafter (Register 85, No. 35).

Article 12. Military and Defense Service

§ 548.115. Right to be Considered.

Permanent civil service employees who are on military leave shall have the same rights to be considered for Career Executive Assignment appointments as if they were not on such leave.

NOTE: Authority cited: Section 18701, Government Code. Reference: Sections 19889 and 19889.2, Government Code.

HISTORY

1. Amendment filed 12–21–73; designated effective 4–1–74 (Register 73, No. 51).
2. Amendment filed 8–14–79; effective thirtieth day thereafter (Register 79, No. 33).
3. Change without regulatory effect amending NOTE filed 9–16–92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 39).

Article 13. Service—General

§ 548.120. Responsibilities and Privileges.

HISTORY

1. Amendment filed 4–8–77; effective thirtieth day thereafter (Register 77, No. 15).
2. Repealer filed 8–28–85; effective thirtieth day thereafter (Register 85, No. 35).

§ 548.121. Unauthorized Employment.

Any person acting in good faith in accepting an appointment or employment contrary to this chapter shall be paid by the appointing power the compensation promised by or on behalf of the appointing power or, in case no compensation is so promised, the actual value of any service rendered and the expense incurred in good faith under such attempted appointment or employment, and has a cause of action against the appointing power therefor.

§ 548.122. Medical Examination.

An appointing power may require an employee serving in a career executive assignment to undergo a medical examination for the same purposes and in the same manner as is provided for the general civil service.

§ 548.123. Good Faith.

Good faith provisions as contained in Section 8 that apply to appointments in the general civil service shall apply in the same manner to appointments to positions in the Career Executive Assignment category.

NOTE: Authority cited: Section 18701, Government Code. Reference: Sections 19257 and 19257.5, Government Code.

HISTORY

1. New section filed 12–21–73; effective thirtieth day thereafter (Register 85, No. 40).
2. Change without regulatory effect amending section filed 9–16–92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 39).

§ 548.124. Correction of Appointments.

When the executive officer determines that a Career Executive Assignment appointment is unlawful, the executive officer shall take corrective and remedial action in the same manner as provided for the general civil service as provided in Sections 266 and 266.1. An employee holding such a Career Executive Assignment appointment shall have the right to receive notice, to respond, and to appeal such corrective action pursuant to Sections 266.2 and 266.3.

NOTE: Authority cited: Section 18701, Government Code. Reference: Sections 19257 and 19257.5, Government Code.

HISTORY

1. New section filed 9–18–85; effective thirtieth day thereafter (Register 85, No. 40).
2. Change without regulatory effect amending section filed 9–16–92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 39).

Article 14. Interjurisdictional Exchange

§ 548.130. Interjurisdictional Exchange.

Participation of career executives in interjurisdictional employee exchange assignments shall be subject to the provisions of Section 427.

NOTE: Authority cited: Section 18701, Government Code. Reference: Sections 18546, 18547, 19050.3 and 19050.8, Government Code.

HISTORY

1. Amendment filed 9–18–85; effective thirtieth day thereafter (Register 85, No. 40).
2. Change without regulatory effect amending section and NOTE filed 9–16–92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 39).

Article 15. Termination of Assignment

§ 548.135. Notice of Termination.

HISTORY

1. Amendment filed 4–8–77; effective thirtieth day thereafter (Register 77, No. 15).
2. Repealer filed 8–28–85; effective thirtieth day thereafter (Register 85, No. 35).

§ 548.136. Appeal from Termination.

Within 30 days after receipt of notice of termination of a career executive assignment, the affected employee may appeal to the State Personnel Board upon the grounds that the termination was effected for reasons of age, sex, sexual preference as prohibited by Governor's Executive Order B–54–79 (4/4/79), marital status, race, color, national origin, ancestry, disability as defined in Government Code Section 19231(a)(1), religion, or religious opinions and affiliations, political affiliation, or political opinions. After hearing the appeal, the board may affirm the action of the appointing power, or restore the affected employee to the career executive assignment.

NOTE: Authority: Sections 18701 and 19889.2, Government Code. Reference: Sections 19231, 19700, 19701, 19702, 19702.1, 19702.2, 19703, and 19889.2, Government Code; *Gay Law Students Association* v. *Pacific Telephone and Telegraph Company* (1979) 24 Cal.3d 458, 156 Cal.Rptr. 14, 595 P.2d 592.

HISTORY

1. Amendment filed 4–8–77; effective thirtieth day thereafter (Register 77, No. 15)
2. Amendment of section filed 8–19–91; operative 9–18–91 (Register 91, No. 50).

§ 548.137. Termination Upon Request of Employee.

HISTORY

1. Repealer filed 8–28–85; effective thirtieth day thereafter (Register 77, No. 15).

§ 548.138. Reduction in Force.

NOTE: Authority cited: Section 19221 and 19530–19541, Government Code.

HISTORY

1. New section filed 10–8–70; effective thirtieth day thereafter (Register 70, No. 41).
2. Amendment filed 12–21–73; designated effective 4–1–74 (Register 73, No. 51).
3. Amendment of NOTE filed 4–8–77; effective thirtieth day thereafter (Register 77, No. 15).
4. Repealer filed 8–28–85; effective thirtieth day thereafter (Register 85, No. 35).

§ 548.139. Seniority Credits.

NOTE: Authority cited: Section 19533, Government Code.

HISTORY

1. New section filed 10–8–70; effective thirtieth day thereafter (Register 70, No. 41).
2. Amendment filed 12–21–73; designated effective 4–1–74 (Register 73, No. 51).
3. Amendment of NOTE filed 4–8–77; effective thirtieth day thereafter (Register 77, No. 15).
4. Repealer filed 8–28–85; effective thirtieth day thereafter (Register 85, No. 35).

Article 16. Separations from State Service

§ 548.145. Separation of Employee.

A person serving in a career executive assignment may be separated from state service through resignation, automatic resignation, dismissal, retirement, or for medical reasons under the provisions of Government Code Section 19253.5 in the same manner as is provided for other civil service employees. The career executive assignment of a person so separated shall be deemed to have been terminated, and the separation to have been from a position in the class in the general civil service in which the employee had permanent status.

HISTORY

1. Amendment filed 4–8–77; effective thirtieth day thereafter (Register 77, No. 15).

Article 17. Reinstatement Following Termination

§ 548.150. Definition.

"Former position," for the purposes of this article, means the last position an employee held as a probationer or permanent employee or a position that is at least at the same salary level and to which the appointing power could have transferred the employee.

NOTE: Authority cited: Section 18701, Government Code. Reference: Section 19889.3, Government Code.

HISTORY

1. New article 17 (sections 548.150–548.155) filed 3–9–81; effective thirtieth day thereafter (Register 81, No. 11).
2. Change without regulatory effect amending NOTE filed 9–16–92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 39).

§ 548.151. Reinstatement to Former Position Following Termination.

An employee terminated from a Career Executive Assignment shall be reinstated to his or her former position unless the employee elects to be appointed to another position, offered by the appointing power, for which he or she is eligible.

NOTE: Authority cited: Section 18701 and 19889.3, Government Code. Reference: Section 19889.3, Government Code.

HISTORY

1. Amendment of section heading filed 9–29–82; effective thirtieth day thereafter (Register 82, No. 40).
2. Amendment filed 9–18–85; effective thirtieth day thereafter (Register 85, No. 40).

§ 548.152. Permissive Reinstatement.

An employee terminated from a Career Executive Assignment on or after January 1, 1981, after completing at least five years of state service may on or after the effective date of this rule be reinstated to a vacant position at the discretion of any appointing power within four years of such termination as follows:

1. Such employees who have completed at least one year but less than three years of career executive service may be reinstated to a position in a class that is not more that two steps higher in salary than the class in which the employee last served as a probationer or permanent employee, provided that such class is at least two steps lower in salary that the career executive level from which the employee is being terminated.

2. Such employees who have completed three or more years of career executive service may be reinstated to a position in any class that is at least two steps lower in salary than the career executive level from which the employee is being terminated.

For employees who are separated from state service, reinstatement eligibility under this rule shall not extend beyond the employee's reinstatement eligibility under Government Code Section 19140.

NOTE: Authority cited: Sections 18701 and 19889.3, Government Code. Reference: Section 19889.3, Government Code.

HISTORY

1. Amendment filed 9–29–82; effective thirtieth day thereafter (Register 82, No. 40).

§ 548.153. Mandatory Reinstatement.

(a) The reinstatement rights provided under this section apply only to employees who are terminated from a Career Executive Assignment on or after April 3, 1981, after completing at least ten years of state service, including at least three consecutive years of career executive service under a single appointing power as specified in part (b) of this section, and who request reinstatement pursuant to this section, in writing, within ten days of receiving notice of the termination of their Career Executive Assignment.

(b) The three consecutive years of career executive service specified under part (a) must

(1) have occurred entirely within six years of the effective date of the employee's termination from a career Executive Assignment, and

(2) must terminate on or after January 1, 1981.

For the purposes of meeting this service requirement, exempt service shall not affect otherwise qualifying career executive service.

(c) Reinstatements under this section shall be to the last appointing power under which the employee completed three consecutive years of career executive service, as specified above.

(d) An eligible employee may request reinstatement to any general civil service level that is:

(1) At least two steps lower in salary than the lowest Career Executive Assignment level a which the employee served during his/her qualifying period of career executive service under this section, provided that the requested level is at least two steps lower than the level from which the employee is being terminated; and

(2) Above the level of the employee's former position.

An employee may limit his/her reinstatement request under this section to positions that the employee could reasonably be expected to accept without a change in his/her place of residence.

(e) Upon receipt of such a request, the appointing power shall reinstate the employee to a position at the requested level and, if applicable, location that is:

(1) Vacant; and

(2) In the same occupational area(s) as the Career Executive Assignment(s) that the employee held under the appointing power, provided such employee possesses any license, certificate, or registration required for the class in which the employee is being reinstated and performance in the Career Executive Assignment(s) combined wit the employee's prior employment history would reasonably predict successful performance in the lower level position.

An employee's refusal to accept a position offered pursuant to these provisions shall constitute a waiver of the employee's rights under this section to be reinstated to or to receive reemployment list eligibility for other positions at the same level, but shall not otherwise impact the rights and eligibilities provided by this article.

(f) If the appointing power does not have a vacant position that can satisfy the employee's reinstatement requested under this section, the following actions shall occur:

(1) If the employee's reinstatement request is not limited to his/her current location, the employee's name shall be placed on the appointing power's departmental and local subdivisional reemployment list for any classes containing positions which, if vacant, would satisfy the employee's reinstatement request pursuant to this section. If the employee's reinstatement request is limited to his/her current location, the employee's name shall be placed on a subdivisional reemployment list covering that location for the classes indicated above. Departmental or subdivisional reemployment list eligibility granted under this section shall not result in the employee's name being placed on any general reemployment list. Subdivisional eligibilities may be changed with the concurrence of the employee and the appointing power.

(2) The reinstatement and reemployment provision outlined in parts (e) and (f)(1) of this section shall be applied in descending order to any lower general civil service levels under the appointing power that contain positions which meet the criteria outlined in parts (d) and (e)(2) of this section.

(g) If an employee cannot be placed in a vacant position pursuant to this section, the employee shall be reinstated to his or her former position.

NOTE: Authority cited: Section 18701 and 19889.3, Government Code. Reference: Section 19889.3, Government Code.

HISTORY

1. Amendment filed 9–29–82; effective thirtieth day thereafter (Register 82, No. 40).
2. Amendment of subsection (f)(1) filed 11–19–82; effective thirtieth day thereafter (Register 82, No. 47).
3. Change without regulatory effect amending section filed 9–16–92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 39).

§ 548.154. Sequence of Reinstatement.

When two or more employees are simultaneously seeking reinstatement or reemployment to the same class pursuant to the rights provided under this article, the appointing power shall act in the following sequence:

(a) All employees exercising a mandatory return right to their former position shall be reinstated.

(b) Employees seeking mandatory reinstatement or reemployment pursuant to Section 548.153 to a position other than their former position shall be appointed in seniority order to any remaining positions, provided that persons on reemployment lists shall be appointed only as allowed by Government Code Section 19056.

(c) Employees seeking permissive reinstatement pursuant to Section 548.152 may be reinstated to any remaining vacant positions.

NOTE: Authority cited: Section 18701, Government Code. Reference: Section 19889.3, Government Code.

HISTORY

1. Change without regulatory effect of subsection (b) filed 12–21–88 (Register 89, No. 1).
2. Change without regulatory effect amending subsections (b) and (c) filed 9–16–92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 39).

§ 548.155. Probationary Period.

An employee who is reinstated pursuant to Sections 548.152 or 548.153 shall be subject to the probationary period requirements specified in Section 322.

NOTE: Authority cited: Section 19889.3, Government Code. Reference: Sections 19170, 19171 and 19889.3, Government Code.

HISTORY

1. Amendment filed 5–29–84; effective thirtieth day thereafter (Register 84, No. 22).
2. Change without regulatory effect amending section filed 9–16–92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 39).

Subchapter 3. State Personnel Board—Conflict of Interest Code

§ 549. General Provisions.

The Political Reform Act (Government Code Section 81000, et seq.) requires state and local government agencies to adopt and promulgate conflict of interest codes. The Fair Political Practices Commission has adopted a regulation (2 Cal. Code of Regs. Section 18730) which contains the terms of a standard conflict of interest code, which can be incorporated by reference in an agency's code. After public notice and hearing it may be amended by the Fair Political Practices Commission to conform to amendments in the Political Reform Act. Therefore, the terms of 2 California Code of Regulations Section 18730 and any amendments to it duly adopted by the Fair Political Practices Commission are hereby incorporated by reference. This regulation and the attached Appendix designating officials and employees and establishing disclosure categories, shall constitute the conflict of interest code of the STATE PERSONNEL BOARD.

All designated employees shall file their statements with the STATE PERSONNEL BOARD who will make the statements available for public inspection and reproduction. (Gov. Code Section 81008). Upon receipt of the statements of board members and the executive officer, the agency shall make and retain a copy and forward the original of these statements to the Fair Political Practices Commission.

NOTE: Authority cited: Sections 87300 and 87304, Government Code. Reference: Section 87300, *et seq.*, Government Code.

HISTORY

1. New subchapter 3 (sections 549–549.7 and Supplements) filed 5–27–77; effective thirtieth day thereafter. Approved by Fair Political Practices Commission 12–16–76 (Register 7, No. 22).
2. Repealer of subchapter 3 (sections 549–549.7 and Supplements) and new subchapter 3 (section 549 and Appendix) filed 2–26–81; effective thirtieth day thereafter. Approved by Fair Political Practices Commission 12–1–80 (Register 81, No. 9).
3. Amendment filed 11–22–91; operative 12–23–91. Submitted to OAL for printing only (Register 92, No. 12).
4. Amendment of Appendix filed 4–6–94; operative 5–6–94. Submitted to OAL for printing only. Approved by Fair Political Practices Commission 1–25–94 (Register 94, No. 14).

Appendix

Designated Positions	*Assigned Disclosure Categories*
Board Member	1, 2, 3, 4
Executive Officer	1, 2, 3, 4
Assistant Executive Officer	1, 2, 3, 4
All Division Chiefs	1, 2, 3, 4
Chief Counsel	1, 2, 3, 4
Staff Counsel	1, 2, 3, 4
All Administrative Law Judges	1, 2, 3, 4
Manager, Merit Appeals Office	1, 2, 3, 4
Consultant*	1, 2, 3, 4

Disclosure Categories

Category 1

Designated officials or employees assigned to this category must report:

(1) Investments and business positions in any business entity and income from any source of the type which, within the last two years, has contracted with the State Personnel Board to provide services, supplies, materials, machinery or equipment.

Category 2

Designated officials or employees assigned to this category must report:

(1) Investments and business positions in any business entity and income from any source of the type which, within the last two years, has contracted with the State Personnel Board to provide instructional or consultative services or facilities for training programs.

Category 3

Designated officials or employees assigned to this category must report:

(1) Investments and business positions in any business entity and income from any source of the type which, within the last two years, has contracted with any county, city, district or other political subdivisions of the State or with State agencies excepted from State civil service to provide technical personnel management services.

Category 4

Designated officials or employees assigned to this category must report:

(1) Investments and business positions in any business entity and income from any source which is an employment agency or a provider of temporary personnel.

*Consultants shall be included in the list of designated employees and shall disclose pursuant to the broadest disclosure category in the code subject to the following limitation:

The executive officer may determine in writing that a particular consultant, although a "designated position," is hired to perform a range of duties that is limited in scope and thus is not required to fully comply with the disclosure requirements in this section. Such written determination shall include a description of the consultant's duties and, based upon that description, a statement of the extent of disclosure requirements. The executive officer's determination is a public record and shall be retained for public inspection in the same manner and location as this conflict of interest code.

Subchapter 4. Demonstration Project and Performance Based Budget Pilot Project Rules (Promulgated Under Authority of Government Code Sections 11808, 18701, and 19600)

Article 1. Demonstration Projects—Department of General Services

§ 549.5. Class; Department of General Services—Career Management Assignment and Career Supervisory Assignment.

For the demonstration projects implemented by the Department of General Services pursuant to Section 11808 of the Government Code for Career Management Assignment and Career Supervisory Assignment "class" means a broadband class for which the same general title may be used to designate each position allocated to the class and which may include more than one speciality area within the same general field of work. In addition to the minimum qualifications for each broadband class, other job–related qualifications may be required for particular positions within the class. These other job–related qualifications shall be described in the key position statement established for each position within the class.

NOTE: Authority cited: Sections 18701 and 18702, Government Code. Reference: Sections 18701, 18702 and 19602, Government Code.

HISTORY

1. New subchapter 4, article 1 (sections 549.5–549.11) and section filed 1–30–97; operative 3–1–97 (Register 97, No. 5).
2. Amendment of article heading, section heading, section and NOTE filed 12–3–97; operative 12–3–97. Submitted to OAL for printing only pursuant to Government Code section 19602 (Register 97, No. 49).

§ 549.6. Examinations; Department of General Services—Career Management Assignment and Career Supervisory Assignment.

The demonstration projects implemented by the Department of General Services pursuant to Section 19600 et seq., of the Government code shall affect the examination process to select candidates for Career Management Assignment and Career Supervisory Assignment positions. During these projects, this department shall conduct open or promotional examinations for positions classified as Career Management Assignment or Career Supervisory Assignment pursuant to the procedures in Subchapter 2, Article 4 (Section 548.30) and Article 5 (Section 548.40 through 548.52) for Career Executive Assignments, with the following exceptions:

(a) The examination announcements specified by Section 548.41 shall specify the general minimum qualifications for the position as prescribed in the class specification and thew other job–related qualifications described in the key position statement established for the particular position within the class.

(b) The appointing power shall be governed by Subchapter 1, Section 171.1 in determining whether an applicant has completed the minimum time required by the experience component in the minimum qualifications, if any.

(c) The appointing power shall send a notification indicating the results of the selection process to all applicants for the position. Any eligible employee may appeal to the State Personnel Board, pursuant to Section 548.49, within 30 days of the date of the notification.

NOTE: Authority cited: Sections 18701 and 18702, Government Code. Reference: Sections 18701, 18702 and 19602, Government Code.

HISTORY

1. New section filed 1–30–97; operative 3–1–97 (Register 97, No. 5).
2. Amendment of first pragraph and NOTE filed 12–3–97; operative 12–3–97. Submitted to OAL for printing only pursuant to Government Code section 19602 (Register 97, No. 49).

§ 549.7. General Reemployment Lists; Department of General Services—Career Management Assignment and Career Supervisory Assignment.

(a) Within the classes in the Career Management Assignment and Career Supervisory Assignment categories there shall be maintained a general reemployment list for each class identified by functional subdivision, recognizing individual position skill–based requirements as indicated in the key position statement for each position consisting of the names of all persons who have occupied positions with probationary or permanent status in the class and who have been legally laid off or demoted in lieu of layoff.

(b) Within one year from the date of his or her resignation in good standing, or his or her voluntary demotion, the name of an employee who had probationary or permanent status may be placed on the general reemployment list as described in (a) above with the consent of the appointing power and the board. The general reemployment list may also contain the names of persons placed thereon by the board in accordance with other provisions of law or rule.

NOTE: Authority cited: Sections 18701 and 18702, Government Code. Reference: Sections 18701, 18702 and 19602, Government Code.

HISTORY

1. New section filed 1–30–97; operative 3–1–97 (Register 97, No. 5).
2. Amendment of NOTE filed 12–3–97; operative 12–3–97. Submitted to OAL for printing only pursuant to Government Code section 19602 (Register 97, No. 49).

§ 549.8. Departmental or Subdivisional Reemployment Lists; Department of General Services—Career Management Assignment and Career Supervisory Assignment.

Within the classes in the Career Management Assignment and Career Supervisory Assignment categories there shall be maintained a separate departmental reemployment list for each class identified by functional subdivision, recognizing individual position skill–based requirements as indicated in the key position statement for each position consisting of the names of persons on the general reemployment list but employed in the Department of General Services at the time of separation. There shall also be maintained a separate subdivisional reemployment list within the Department of General Services which shall consist of the names of persons employed in a subdivision of the Department of General Services at the time of separation if subdivisions for the Department of General Services have been set up with the approval of the Department of Personnel Administration for layoff purposes.

NOTE: Authority cited: Sections 18701 and 18702, Government Code. Reference: Sections 18701, 18702 and 19602, Government Code.

HISTORY

1. New section filed 1–30–97; operative 3–1–97 (Register 97, No. 5).
2. Amendment of NOTE filed 12–3–97; operative 12–3–97. Submitted to OAL for printing only pursuant to Government Code section 19602 (Register 97, No. 49).

§ 549.9. Probation; Department of General Services—Career Management Assignment and Career Supervisory Assignment.

(a) The Department of General Service may, with the consent of the employee, extend the length of the employee's probationary period in any class within either the Career Management Assignment or the Career Supervisory Assignment categories. No extension shall exceed twelve (12) months or 1680 hours beyond the original proscribed probationary period for the class.

(b) Requests to extend an employee's probationary period must be submitted in writing to the Personnel Office and approved by the Appointing Authority at least five working days prior to completion of the initial 12–month probationary period.

(c) A Job Improvement Plan (Plan) must be developed for any employee who is subject to an extension of their probationary period. The Plan must specify any formal training, practice sessions, on–the–job training, or other alternative methods for job improvement which will be

used to bring the employee's performance to an acceptable level. The employee must participate in the development of the plan and agree to follow.

(d) Performance evaluations must be provided at four (4)–month intervals and the employee may be passed or rejected at any time during the twelve (12)–month extension.

(e) A rejection during the extended time period shall be considered the same as a rejection during the original probationary period and the employee shall retain all rights accorded by law or rule. Notice to the employee shall be in the manner proscribed by Government Code Section 19173.

(f) The employee will have the same rights to appeal a rejection during the extension of the probationary period as an employee who is rejected during the original probationary period.

NOTE: Authority cited: Sections 18701 and 18702, Government Code. Reference: Sections 18701, 18702 and 19602, Government Code.

HISTORY

1. New section filed 1–30–97; operative 3–1–97 (Register 97, No. 5).
2. Repealer and new section and amendment of NOTE filed 12–3–97; operative 12–3–97. Submitted to OAL for printing only pursuant to Government Code section 19602 (Register 97, No. 49).

§ 549.10. Appeal from Rejection During Probation; Department of General Services—Career Management Assignment and Career Supervisory Assignment.

(a) It is the intent of the Board that the Department of General Services and the employees appointed to Career Management Assignment or Career Supervisory Assignment classes will collaborate on the performance assessment standards to be used to identify and communicate quality of performance.

(b) Employees that are rejected during probation from classes in the Career Management Assignment and Career Supervisory Assignment categories either during the original probationary period or an extension of that probationary period, will be permitted to appeal the rejection only on three grounds: (1) discrimination; (2) fraud; (3) patronage. Employees will file appeals with the Personnel Board. The Personnel Board will schedule the appeal for hearing only in cases where the rejected employee has made a prima facie case at the threshold stage of the process. Appeals which do not allege and offer proof of one or more of the three grounds for appeal noted above will be dismissed with prejudice.

(c) The decision of the board to modify the action of the appointing power pursuant to this rule shall be taken only if the board determines, after investigation or hearing, that the rejection was made as a result of discrimination, fraud or patronage. In any such proceeding, the rejected employee shall have the burden of proof. Subject to rebuttal by the employee, it shall be presumed that the action was free from discrimination, fraud and patronage and that the statement of reasons in the notice of rejection during probation is true.

NOTE: Authority cited: Sections 18701 and 18702, Government Code. Reference: Sections 18701, 18702 and 19602, Government Code.

HISTORY

1. New section filed 1–30–97; operative 3–1–97 (Register 97, No. 5).
2. Amendment of subsections (b) and (c) and NOTE filed 12–3–97; operative 12–3–97. Submitted to OAL for printing only pursuant to Government Code section 19602 (Register 97, No. 49).

§ 549.11. Tenure of Managerial and Supervisory Employees; Department of General Services—Career Management Assignment and Career Supervisory Assignment.

The provisions of Government Code Sections 19590 through 19593 shall apply to employees appointed to classes in the Career Management Assignment category after November 1, 1995, and to employees appointed to classes in the Career Supervisory Assignment category after November 5, 1996, except that notwithstanding Section 19593, these rules shall also apply to demotions from Career Management Assignment or Career Supervisory Assignment positions, regardless of when the managerial or supervisory appointment was effective.

NOTE: Authority cited: Sections 18701 and 18702, Government Code. Reference: Sections 18701, 18702, 18703 and 19602, Government Code.

HISTORY

1. New section filed 1–30–97; operative 3–1–97 (Register 97, No. 5).
2. Amendment of section and NOTE filed 12–3–97; operative 12–3–97. Submitted to OAL for printing only pursuant to Government Code section 19602 (Register 97, No. 49).

§ 549.12. Selection and Examinations; Department of General Services.

The Department of General Services shall utilize the following certification process for all classes which would normally fall under the provisions of Government Code Sections 19057 and 19057.4 and are used within the department:

For positions in these classes, there shall be certified to the appointing power the names and addresses of all those eligibles whose scores, at time of certification, represent the three highest ranks on the employment list for the class, and who have indicated their willingness to accept appointment under the conditions of employment specified.

For purposes of ranking, scores of eligibles on employment lists for these classes shall be rounded to the nearest whole percent. A rank shall consist of one or more eligibles with the same whole percentage score.

If the names on the list from which certification is being made represent fewer than three ranks, then additional eligibles shall be certified from the various lists next lower in order of preference until names from three ranks appear. If there are fewer than three names available for certification, and the appointing authority does not choose to appoint from among these, the appointing authority may demand certification of three names. In that case, examinations shall be conducted until at least three names may be certified by the procedure described in this section; if the appointing authority is going to fill the position using the eligible list, it shall fill the position by appointment of one of the persons certified.

HISTORY

1. New section filed 6–5–97; operative 6–5–97 pursuant to Government Code section 11343.4(d). Submitted to OAL for printing only (Register 97, No. 29).

Article 2. Demonstration Project—Health and Welfare Agency Data Center

§ 549.30. Demonstration Project; Health and Welfare Agency Data Center Examinations and Appointments.

If the Health and Welfare Agency Data Center appointing power wishes to appoint a competitor to a position for which an examination has been conducted within the Health and Welfare Agency Data Center demonstration project, the appointing power shall fill the vacancy by selection of a competitor who has filed a timely application for the examination pursuant to Section 174, who meets the minimum qualifications for the class, and who is judged to be among the best qualified available competitors as a result of evaluations made pursuant to Section 549.31. If the appointing power has at the same time or within one year of the final date specified for filing an application for the examination more than one vacancy in the same class and for which the same or substantially similar job–related knowledge, skills and abilities are required, the first and every succeeding vacancy shall be filled in a like manner by selection of a competitor who has filed a timely application for the examination pursuant to Section 174, who meets the minimum qualifications for the class and who is judged to be among the best qualified remaining competitors pursuant to Section 549.31 unless the appointing power chooses to conduct a new examination, in which case the appointing power shall appoint a competitor judged to be among the best qualified in the new examination and who also has filed a timely application for that examination and meets the minimum qualifications for the class. For the duration of the Health and Welfare Agency Data Center demonstration project and for a period of at least one year following its conclusion, the Health and Wel–

fare Agency Data Center shall maintain records of each examination conducted within the demonstration project. The records shall be sufficient to permit an independent review of examinations conducted within the demonstration project to determine whether they have complied with the intent of this Section, Section 549.31 and Article VII, Section 1(b) of the California Constitution. For each examination, such records shall include, but not be limited to, (a) a list of competitors who filed an application for the examination together with a notation as to their date of filing, (b) justification whether each competitor met the minimum qualifications for the class, and (c) a summary of the evaluation pursuant to Section 549.31 of each competitor who is offered a position. The provisions of this regulation do not apply if an appointment is to be made from a reemployment list under Government Code Section 19056. The provisions of this regulation do not apply if an appointment is to be made from a general reemployment list pursuant to Government Code Section 19056.5, unless there are fewer than three persons on the general reemployment list willing to accept employment under the conditions of employment specified in which case the appointing power may appoint a competitor in accordance with the provisions of this Section.

NOTE: Authority cited: Section 19602, Government Code. Reference: Section 19602, Government Code.

HISTORY

1. New article 2 (sections 549.30–549.34) and renumbering and amendment of former section 216 to new section 549.30 filed 3–10–97; operative 3–10–97. Submitted to OAL for printing only (Register 97, No.11).

§ 549.31. Health and Welfare Agency Data Center Demonstration Project Competitive Evaluations.

Evaluations of education, experience, job related knowledge, skills, abilities and behaviors, and personal qualifications shall be made on a competitive basis in that each competitor shall be evaluated thereon in relation to the minimum and desirable qualifications for the class and position in question and in relation to the comparable qualifications of other competitors. The term "personal qualifications" includes all such personality traits and personal, moral, and physical characteristics as are necessarily comprehended by the minimum and desirable qualifications established for the class and position. When evaluating competitor's education, experience, and job related knowledge, skills, abilities and behaviors, interviewers shall consider the quality, and pertinence of such education, experience, and job related knowledge, skills, abilities and behaviors, and the degree to which competitor's total education and work histories and job related knowledge, skills, abilities and behaviors represent suitable preparation for the work of the class and position.

NOTE: Authority cited: Section 19602, Government Code. Reference: Section 19602, Government Code.

HISTORY

1. Renumbering and amendment of former section 216.1 to new section 549.31 filed 3–10–97; operative 3–10–97. Submitted to OAL for printing only (Register 97, No.11).

§ 549.32. Health and Welfare Agency Data Center Demonstration Project Notices of Examination Results.

As soon as an examination has been completed, each competitor shall be notified in writing of the results of this examination.

NOTE: Authority cited: Section 19602, Government Code. Reference: Section 19602, Government Code.

HISTORY

1. Renumbering of former section 216.2 to new section 549.32 filed 3–10–97; operative 3–10–97. Submitted to OAL for printing only (Register 97, No.11).

§ 549.33. Demonstration Project; Health and Welfare Agency Data Center; Definition of "Class"; Establishment of Minimum Qualifications.

For the demonstration project at the Health and Welfare Agency Data Center, "class" means a consolidation of similar classes in the same occupational area into a broader and deeper grouping for which the same general title may be used to designate each position allocated to the class and which may include more than one speciality area within the general field of work. In addition to the general minimum qualifications for each "class", other job related qualifications will be required for particular positions within the class. The other job–related qualifications shall be described in the Individual Position Descriptions established for each position within the class.

NOTE: Authority cited: Section 19602, Government Code. Reference: Section 19602, Government Code.

HISTORY

1. New section filed 3–10–97; operative 3–10–97. Submitted to OAL for printing only (Register 97, No.11).

§ 549.34. Demonstration Project; Health and Welfare Agency Data Center; Voluntary Transfer Between Classes.

Voluntary transfer between the "classes" as defined in rule 549.33 and other classes will be permitted pursuant to State Personnel Board rules 430–435, except transfers form the Health and Welfare Agency Data Center class of Information Technology Specialist, Range E to the classes of Senior Programmer Analyst (Specialist and Supervisor) and Senior Information Systems Analyst (Specialist and Supervisor) will not be permitted under any circumstances.

NOTE: Authority cited: Section 19602, Government Code. Reference: Section 19602, Government Code.

HISTORY

1. New section filed 3–10–97; operative 3–10–97. Submitted to OAL for printing only (Register 97, No.11).

Article 3. Performance Based Pilot Projects—Department of Consumer Affairs

§ 549.40. Selection and Examinations; Department of Consumer Affairs.

The Department of Consumer Affairs shall utilize the following certification process for all classes which would normally fall under the provisions of Government Code Sections 19057 and 19057.4 and are used within the department.

For positions in these classes, there shall be certified to the appointing power the names and addresses of all those eligibles whose scores, at time of certification, represent the three highest ranks on the employment list for the class, and who have indicated their willingness to accept appointment under the conditions of employment specified.

For purposes of ranking, scores of eligibles on employment lists for these classes shall be rounded to the nearest whole percent. A rank shall consist of one or more eligibles with the same whole percentage score.

If the names on the list from which certification is being made represent fewer than three ranks, then additional eligibles shall be certified from the various lists next lower in order of preference until names from three ranks appear. If there are fewer than three names available for certification, and the appointing authority does not choose to appoint from among these, the appointing authority may demand certification of three names. In that case, examinations shall be conducted until at least three names may be certified by the procedure described in this section; if the appointing authority is going to fill the position using the eligible list, it shall fill the position by appointment of one of the persons certified.

NOTE: Authority cited: Sections 18210, 18211, 18213 and 18701, Government Code. Reference: Sections 18211 and 18213, Government Code.

HISTORY

1. New article 3 (section 549.40) and section filed 3–19–97; operative 3–19–97. Submitted to OAL for printing only pursuant to Government Code sections 18211 and 18213 (Register 97, No. 18).
2. Amendment of section heading, section and NOTE filed 9–22–97; operative 9–22–97. Submitted to OAL for printing only pursuant to Government Code sections 18211 and 18213 (Register 97, No. 45).

Article 4. Demonstration Project—Multi-Departmental

§ 549.50. Demonstration Project: Examination for Managerial Classifications.

Under State Personnel Board supervision, any department specifically approved by State Personnel Board action to be included in this demonstration project, shall conduct a demonstration project, pursuant to Sections 19600 and 19607 of the Government Code, affecting the examination process to select candidates for managerial positions. During this demonstration project, these departments shall conduct examinations for positions classified as managerial pursuant to the procedures in Article 4 (Section 548.30) and Article 5 (Section 548.40 through 548.52) for Career Executive Assignments, with the following exceptions:

(a) The examination announcements specified by Section 548.41 shall specify the minimum qualifications for the position as prescribed for the specific classification.

(b) The appointing powers shall be governed by Section 171.1 in determining whether an applicant has completed the minimum time required by the experience component in the minimum qualifications, if any.

(c) The appointing power shall send a notification to all employees eligible for the position indicating which candidate has been selected. Any eligible employee may appeal to the State Personnel Board, pursuant to Section 548.49, within 30 days of the date of the notification.

NOTE: Authority cited: Sections 18210, 18211, 18213 and 18701, Government Code. Reference: Sections 19600 and 19607, Government Code.

HISTORY

1. New article 4 (section 549.50) and renumbering of former section 215.00 to new section 549.50, including amendment of section and NOTE, filed 9-17-97; operative 9-17-97. Submitted to OAL for printing only pursuant to Government Code sections 18210, 18211 and 18213 (Register 97, No. 38).

Article 5. Demonstration Project—Managerial Selection and Classification Consolidation and Broadbanding—Servicewide by Departmental Option

§ 549.60. Definition of "Class" and Establishment of Minimum Qualifications; Managerial Selection and Classification Consolidation and Broadbanding—Demonstration Project.

NOTE: Authority cited: Sections 18701, 18702 and 19602, Government Code. Reference: Sections 18701, 18702 and 19600–19607, Government Code.

HISTORY

1. New article 5 (sections 549.60–549.67) and section filed 12-9-98; operative 12-9-98. Submitted to OAL for printing only pursuant to Government Code section 19602 (Register 98, No. 50).
2. Repealer of article 5 (sections 549.60–549.67) and section filed 3-23-2000; operative 3-23-2000. Submitted to OAL for printing only pursuant to Government Code section 18213 (Register 2000, No. 15).

§ 549.61. Selection and Examinations; Managerial Selection and Classification Consolidation and Broadbanding Demonstration Project.

NOTE: Authority cited: Sections 18701, 18702 and 19602, Government Code. Reference: Sections 18701, 18702 and 19600–19607, Government Code.

HISTORY

1. New section filed 12-9-98; operative 12-9-98. Submitted to OAL for printing only pursuant to Government Code section 19602 (Register 98, No. 50).
2. Repealer filed 3-23-2000; operative 3-23-2000. Submitted to OAL for printing only pursuant to Government Code section 18213 (Register 2000, No. 15).

§ 549.62. Appointment; Managerial Selection and Classification Consolidation and Broadbanding Demonstration Project.

NOTE: Authority cited: Sections 18701, 18702 and 19602, Government Code. Reference: Sections 18701, 18702 and 19600–19607, Government Code.

HISTORY

1. New section filed 12-9-98; operative 12-9-98. Submitted to OAL for printing only pursuant to Government Code section 19602 (Register 98, No. 50).
2. Repealer filed 3-23-2000; operative 3-23-2000. Submitted to OAL for printing only pursuant to Government Code section 18213 (Register 2000, No. 15).

§ 549.63. General Reemployment Lists; Managerial Selection and Classification Consolidation and Broadbanding Demonstration Project.

NOTE: Authority cited: Sections 18701, 18702 and 19602, Government Code. Reference: Sections 18701, 18702 and 19600–19607, Government Code.

HISTORY

1. New section filed 12-9-98; operative 12-9-98. Submitted to OAL for printing only pursuant to Government Code section 19602 (Register 98, No. 50).
2. Repealer filed 3-23-2000; operative 3-23-2000. Submitted to OAL for printing only pursuant to Government Code section 18213 (Register 2000, No. 15).

§ 549.64. Departmental or Subdivisional Reemployment Lists; Managerial Selection and Classification Consolidation and Broadbanding Demonstration Project.

NOTE: Authority cited: Sections 18701, 18702 and 19602, Government Code. Reference: Sections 18701, 18702 and 19600–19607, Government Code.

HISTORY

1. New section filed 12-9-98; operative 12-9-98. Submitted to OAL for printing only pursuant to Government Code section 19602 (Register 98, No. 50).
2. Repealer filed 3-23-2000; operative 3-23-2000. Submitted to OAL for printing only pursuant to Government Code section 18213 (Register 2000, No. 15).

§ 549.65. Probation; Managerial Selection and Classification Consolidation and Broadbanding Demonstration Project.

NOTE: Authority cited: Sections 18701, 18702 and 19602, Government Code. Reference: Sections 18701, 18702 and 19600–19607, Government Code.

HISTORY

1. New section filed 12-9-98; operative 12-9-98. Submitted to OAL for printing only pursuant to Government Code section 19602 (Register 98, No. 50).
2. Repealer filed 3-23-2000; operative 3-23-2000. Submitted to OAL for printing only pursuant to Government Code section 18213 (Register 2000, No. 15).

§ 549.66. Transfer Between Classes; Managerial Selection and Classification Consolidation and Broadbanding Demonstration Project.

NOTE: Authority cited: Sections 18701, 18702 and 19602, Government Code. Reference: Sections 18701, 18702 and 19600–19607, Government Code.

HISTORY

1. New section filed 12-9-98; operative 12-9-98. Submitted to OAL for printing only pursuant to Government Code section 19602 (Register 98, No. 50).
2. Repealer filed 3-23-2000; operative 3-23-2000. Submitted to OAL for printing only pursuant to Government Code section 18213 (Register 2000, No. 15).

§ 549.67. Compensation; Managerial Selection and Classification Consolidation and Broadbanding Demonstration Project.

NOTE: Authority cited: Sections 18701, 18702 and 19602, Government Code. Reference: Sections 18701, 18702 and 19600–19607, Government Code.

HISTORY

1. New section filed 12-9-98; operative 12-9-98. Submitted to OAL for printing only pursuant to Government Code section 19602 (Register 98, No. 50).
2. Repealer filed 3-23-2000; operative 3-23-2000. Submitted to OAL for printing only pursuant to Government Code section 18213 (Register 2000, No. 15).

Article 6. Legislative Counsel Bureau — Special Examination and Appointment Program

§ 549.70. Legislative Counsel Bureau: Examinations and Appointments.

If the Legislative Counsel Bureau appointing power wishes to appoint a competitor to an information technology position for which an examination has been conducted, the appointing power shall fill the vacancy by selection of a competitor who has filed a timely application for the examination pursuant to Section 174, who meets the minimum qualifications for the class, and who is judged to be among the best qualified available competitors as a result of evaluations made pursuant to Section 549.71.

If the appointing power has at the same time or within one year of the final date specified for filing an application for the examination more than one vacancy in the same class and for which the same or substantially similar job-related knowledge, skills, and abilities are required, the first and every succeeding vacancy shall be filled in a like manner by selection of a competitor who has filed a timely application for the examination pursuant to Section 174, who meets the minimum qualifications for the class and who is judged to be among the best qualified remaining competitors pursuant to Section 549.71, unless the appointing power chooses to conduct a new examination, in which case the appointing power shall appoint a competitor judged to be among the best qualified in the new examination and who also has filed a timely application for that examination and who meets the minimum qualifications for the class.

The Legislative Counsel Bureau shall maintain records of each examination conducted. The records shall be sufficient to permit an independent review of examinations conducted to determine whether they have complied with the intent of this Section, Section 549.71, and Article VII, Section 1(b) of the California Constitution. For each examination, such records shall include, but not be limited to (a) a list of competitors who filed an application for the examination together with a notation as to their date of filing; (b) justification whether each competitor met the minimum qualifications for the class; and (c) a summary of the evaluation pursuant to Section 549.71 of each competitor who is offered a position.

The provisions of this regulation do not apply if an appointment is to be made from a reemployment list under Government Code Section 19056. The provisions of this regulation do not apply if an appointment is to be made from a general reemployment list pursuant to Government Code Section 19056.5, unless there are fewer than three persons on the general reemployment list willing to accept employment under the conditions of employment specified, in which case the appointing power may appoint a competitor in accordance with the provisions of the Section.

Examinations shall be conducted pursuant to the procedures in Article 4 (commencing with Section 548.30) and Article 5 (commencing with Section 548.40) as with Career Executive Assignments.

NOTE: Authority cited: Sections 10205.1, 18701 and 18702, Government Code. Reference: Sections 18701 and 18702, Government Code.

HISTORY

1. New article 6 (sections 549.70–549.74) and new section filed 1–6–98; operative 1–6–98. Submitted to OAL for printing only pursuant to Government Code section 19602 (Register 98, No. 2).
2. Amendment of section heading, section and NOTE filed 3–21–2005; operative 3–21–2005 pursuant to Government Code section 11343.4. Submitted to OAL for printing only (Register 2005, No. 12).

§ 549.71. Legislative Counsel Bureau: Competitive Evaluations.

Evaluations of education, experience, job-related knowledge, skills, abilities, behaviors, and personal qualifications shall be made on a competitive basis in that each competitor shall be evaluated thereon in relation to the minimum and desirable qualifications for the class and position in question and in relation to the comparable qualifications of other competitors. The term "personal qualifications" includes all such personality traits and personal, moral, and physical characteristics as are necessarily comprehended by the minimum and desirable qualifications established for the class and position.

When evaluating a competitor's education, experience, and job-related knowledge, skills, abilities, and behaviors, interviewers shall consider the quality and pertinence of such education, experience, and job-related knowledge, skills, abilities, and behaviors, and the degree to which the competitor's total education and work history and job-related knowledge, skills, abilities, and behaviors represent suitable preparation for the work of the class and position.

NOTE: Authority cited: Sections 10205.1, 18701 and 18702, Government Code. Reference: Sections 18701 and 18702, Government Code.

HISTORY

1. New section filed 1–6–98; operative 1–6–98. Submitted to OAL for printing only pursuant to Government Code section 19602 (Register 98, No. 2).
2. Amendment of section heading and NOTE filed 3–21–2005; operative 3–21–2005 pursuant to Government Code section 11343.4. Submitted to OAL for printing only (Register 2005, No. 12).

§ 549.72. Legislative Counsel Bureau: Notice of Examination Results.

As soon as an examination has been completed, each competitor shall be notified in writing of the results of the examination. Pursuant to Section 548.49, an appeal shall be filed within thirty (30) days from the date the candidate was notified of the examination results.

NOTE: Authority cited: Sections 10205.1, 18701 and 18702, Government Code. Reference: Sections 18701 and 18702, Government Code.

HISTORY

1. New section filed 1–6–98; operative 1–6–98. Submitted to OAL for printing only pursuant to Government Code section 19602 (Register 98, No. 2).
2. Amendment of section heading, section and NOTE filed 3–21–2005; operative 3–21–2005 pursuant to Government Code section 11343.4. Submitted to OAL for printing only (Register 2005, No. 12).

§ 549.73. Legislative Counsel Bureau: Definition of "Class" and Establishment of Minimum Qualifications.

For the Legislative Counsel Bureau, "class" means a consolidation of similar classes in the same occupational area into a broader and deeper grouping for which the same general title may be used to designate each position allocated to the class and which may include more than one specialty area within the general field of work.

In addition to the general minimum qualifications for each "class", other job-related qualifications will be required for particular positions within the class. The other job-related qualifications shall be described in the individual Position Descriptions established for each position within the class.

NOTE: Authority cited: Sections 10205.1, 18701 and 18702, Government Code. Reference: Sections 18701 and 18702, Government Code.

HISTORY

1. New section filed 1–6–98; operative 1–6–98. Submitted to OAL for printing only pursuant to Government Code section 19602 (Register 98, No. 2).
2. Amendment of section heading, section and NOTE filed 3–21–2005; operative 3–21–2005 pursuant to Government Code section 11343.4. Submitted to OAL for printing only (Register 2005, No. 12).

§ 549.74. Legislative Counsel Bureau: Voluntary Transfer Between Classes.

Voluntary transfer between the "classes" as defined in Rule 549.73 and other classes will be permitted pursuant to State Personnel Board Rules 430–435, except that transfers from the Legislative Counsel Bureau class of Information Technology Specialist, Range E to the classes of Senior Programmer Analyst (Specialist and Supervisor) and Senior Information Systems Analyst (Specialist and Supervisor) will not be permitted under any circumstances.

NOTE: Authority cited: Sections 10205.1, 18701 and 18702, Government Code. Reference: Sections 18701 and 18702, Government Code.

History

1. New section filed 1–6–98; operative 1–6–98. Submitted to OAL for printing only pursuant to Government Code section 19602 (Register 98, No. 2).
2. Amendment of section heading and NOTE filed 3–21–2005; operative 3–21–2005 pursuant to Government Code section 11343.4. Submitted to OAL for printing only (Register 2005, No. 12).

Article 7. Department of Motor Vehicles—Special Examination and Appointment Program

§ 549.80. Department of Motor Vehicles: Managerial and Supervisory Selection and Examination.

Pursuant to Government Code section 19602.5, the Department of Motor Vehicles (DMV) may conduct examinations and make appointments to select candidates for specified managerial and supervisory classifications, as approved by the Executive Officer. Examinations for the above identified classifications shall be conducted pursuant to the procedures in Article 4 (Section 548.30) and Article 5 (Section 548.40 through 548.52) for Career Executive Assignments, with the following exceptions:

(a) The examination announcements specified by Section 548.41 shall specify the minimum qualifications for the position as prescribed for the specific classification.

(b) The appointing power shall be governed by Section 171.1 in determining whether an applicant has completed the minimum time required by the experience component in the minimum qualifications, if any.

(c) Any eligible employee or applicant may appeal to the State Personnel Board, pursuant to Section 548.49, within thirty (30) days of the date of the notification of examination results.

(d) Examinations may be either open or promotional.

NOTE: Authority cited: Sections 18701 and 19602.5, Government Code. Reference: Sections 18930, 19054.1, 19600, 19605 and 19607, Government Code.

History

1. New article 7 (section 549.80) and section filed 6–27–2001; operative 6–27–2001 pursuant to Government Code section 11343.4. Submitted to OAL for printing only pursuant to Government Code section 19602 (Register 2001, No. 26).
2. Amendment of article heading, section heading, section and NOTE filed 3–19–2007; operative 1–9–2007 pursuant to Government Code section 18221. Submitted to OAL for filing and printing only pursuant to Government Code section 11343.8 (Register 2007, No. 12).
3. Amendment of first paragraph filed 2–25–2008; operative 1–22–2008. Submitted to OAL for printing only pursuant to Government Code sections 18211 and 18213 (Register 2008, No. 9).

Article 8. California Department of Transportation

§ 549.90. California Department of Transportation Managerial Selection Program.

Under State Personnel Board supervision, the California Department of Transportation (Department) shall conduct the examination process to select candidates for positions designated M01 and M09. The Department shall conduct examinations for the above identified classifications pursuant to the procedures in Article 4 (Section 548.30) and Article 5 (Section 548.40 through 548.52) for Career Executive Assignments, with the following exceptions:

(a) The examination announcements specified by Section 548.41 shall specify the minimum qualifications for the position as prescribed for the specific classification.

(b) The appointing power shall be governed by Section 171.1 in determining whether an applicant has completed the minimum time required by the experience component in the minimum qualifications, if any.

(c) Any eligible employee may appeal to the State Personnel Board, pursuant to Section 548.49, within thirty (30) days of the date of the notification of examination results.

(d) Examinations may be either open or promotional.

NOTE: Authority cited: Section 18701, Government Code. Reference: Sections 19600, 19605 and 19607, Government Code.

History

1. New article 8 (section 549.90) and section filed 9–17–2001; operative 9–17–2001. Submitted to OAL for printing only pursuant to Government Code section 19602(f) (Register 2001, No. 38).
2. Amendment of article heading, section heading and section filed 3–19–2008; operative 1–22–2008. Submitted to OAL for printing only pursuant to Government Code section 19602(f) (Register 2008, No. 12).

Article 9. Demonstration Project — Prison Industry Authority

§ 549.95. Prison Industry Authority Managerial and Supervisory Selection Demonstration Project.

Under State Personnel Board (SPB) supervision, the Prison Industry Authority (PIA) shall conduct a demonstration project, pursuant to Government Code Sections 19600, 19605, and 19607, affecting the examination process to select candidates for positions designated M12 and S12 within PIA. During this demonstration project, the department shall conduct examinations for the above–identified classifications pursuant to the procedures in Article 4 (Section 548.30) and Article 5 (Sections 548.40 through 548.52) for Career Executive Assignments for testing purposes only, with the following exceptions:

(a) The examination announcements specified by Section 548.41 shall specify the minimum qualifications for the position as prescribed in the specific classification.

(b) The appointing power shall be governed by Section 171.1 in determining whether an applicant has completed the minimum time required by the experience component in the minimum qualifications, if any.

(c) Any eligible employee may appeal to SPB, pursuant to Section 548.49, within thirty (30) days of the date of the notification of the examination results.

(d) Examinations may be either open or promotional.

NOTE: Authority cited: Section 18701, Government Code. Reference: Sections 19600, 19605 and 19607, Government Code.

History

1. New article 9 (section 549.95) and section filed 11–4–2002; operative 11–4–2002. Submitted to OAL for printing only pursuant to Government Code section 19602(f) (Register 2002, No. 45).

* * *

Barclays Official

CALIFORNIA CODE OF REGULATIONS

Title 2. Administration

Division 1. Administrative Personnel

Chapter 2. Board of Administration of Public Employees' Retirement System

Vol. 2

THOMSON
WEST

BARCLAYS OFFICIAL CALIFORNIA CODE OF REGULATIONS
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Chapter 2. Board of Administration of Public Employees' Retirement System

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Chapter 2. Board of Administration of Public Employees' Retirement System

Subchapter 1. Employees' Retirement System Regulations

Article 1. General

§ 550. Definitions.

For the purpose of the regulations contained in this subchapter, the term "board" means Board of Administration, Public Employees' Retirement System; "retirement allowance" means a service retirement allowance or disability retirement allowance payable under the Public Employees' Retirement Law to a retired person; "group insurance plan" means a policy of group life, accident, health, or disability insurance, or a contract of a nonprofit membership corporation for the purpose of defraying the cost of medical service (including service rendered by doctors of medicine, doctors of osteopathy, or doctors of chiropractic) or hospital care, or both.

NOTE: Authority cited: for Subchapter 1 (§§ 550 and 551): Sections 20120 and 20630, Government Code. Additional authority cited: Sections 20135, 20303, 22500, Government Code. Reference: Section 20133, Government Code.

HISTORY

1. New Subchapter 1 (§§ 550 and 551) filed 12–15–59; effective 30th day thereafter (Register 59, No. 21).
2. Repealer of Subchapters 1 and 1.1, and new Subchapter 1 (Sections 550, 550.1, 560, 575, 580, 581) filed 6–29–60; effective thirtieth day thereafter (Register 60, No. 15). (For history of Subchapter 1.1, see Registers 56, No. 7, and 57, No. 18).
3. Amendment filed 8–5–76; effective thirtieth day thereafter (Register 76, No. 32).

§ 550.1. Definitions.

HISTORY

1. Repealer filed 8–5–76; effective thirtieth day thereafter (Register 76, No. 32).

§ 551. Location of Offices.

The office of the board is located at 400 P Street, Sacramento, California. Correspondence should be addressed to the Executive Officer, Public Employees' Retirement System, P.O. Box 942702, Sacramento, California 94229–2702.

NOTE: Authority cited: Section 20120, Government Code. Reference: Section 20133, Government Code.

HISTORY

1. New section filed 8–5–76; effective thirtieth day thereafter (Register 76, No. 32).
2. Change without regulatory effect amending section filed 6–12–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 24).

Article 2. Administration

§ 554. Election of Board Members.

Board member elections shall be conducted by the Election Coordinator designated by the Executive Officer in accordance with procedures adopted by the Board.

All CalPERS staff directly involved in conducting Board elections shall be required to sign a statement that they have fully complied with the CalPERS Board election procedures and have faithfully performed their assigned duties in the election. These statements shall be on file with the CalPERS Executive Office and shall be completed each time an election is held. No CalPERS staff directly involved in conducting a CalPERS election shall use his/her official position to favor one candidate over another. Nothing in this section shall prohibit CalPERS staff who are eligible to vote in an election from exercising the same personal rights as other eligible voters.

NOTE: Authority cited: Section 20121, Government Code. Reference: Section 20096, Government Code.

HISTORY

1. New section filed 7–2–82; effective thirtieth day thereafter (Register 82, No. 27). For history of Article 2, see Register 64, No. 17.
2. Amendment filed 7–9–84; effective thirtieth day thereafter (Register 84, No. 28).
3. Amendment of NOTE filed 8–24–98; operative 9–23–98 (Register 98, No. 35).
4. Amendment of second paragraph filed 11–30–2000 as an emergency; operative 11–30–2000 (Register 2000, No. 48). A Certificate of Compliance must be transmitted to OAL by 3–30–2001 or emergency language will be repealed by operation of law on the following day.
5. Change without regulatory effect correcting 11–30–2000 emergency action filed 12–18–2000 pursuant to section 100, title 1, California Code of Regulations (Register 2000, No. 51).
6. Pursuant to the order of the Superior Court of California, Court of Sacramento, dated April 20, 2001, in *California State Employees Association, Local 1000, SEIU, AFL–CIO, CLC v. Public Employees Retirement System, et al.*, No. 00CS01662, the emergency amendment filed 11–30–2000 has been invalidated and is unenforceable until adopted in full compliance with the Administrative Procedure Act. Reinstatement of section as it existed prior to 11–30–2000 emergency amendment (Register 2001, No. 22).
7. Amendment filed 8–2–2001; operative 9–1–2001 (Register 2001, No. 31).

§ 554.1. Agency Responsibilities in Active Member Elections.

Each public agency and each State department shall appoint an Agency Election Officer at the request of the Board in elections for Board members. Agencies shall immediately notify the Board of any change in the appointment.

Agency Election Officers shall:

(a) Certify that the designated Election Officer understands and will comply with the election instructions and that actions taken will be compatible with ethical election practices.

(b) Ensure the timely distribution to eligible members or posting of election materials sent by the Election Coordinator, according to the Election Coordinator's instructions.

(c) Ensure impartiality of the election process within the agency.

(d) Ensure no campaign material is distributed with the election material sent by the Election Coordinator.

(e) Promptly provide any information necessary to the election process at the request of the Election Coordinator.

(f) Certify, under penalty of perjury, that election materials were forwarded to PERS members in that agency, as instructed by the Election Coordinator.

NOTE: Authority cited: Section 20121, Government Code. Reference: Section 20096, Government Code.

HISTORY

1. New section filed 7–2–82; effective thirtieth day thereafter (Register 82, No. 27).
2. Amendment filed 7–9–84; effective thirtieth day thereafter (Register 84, No. 28).
3. New subsection (a), repealer of former subsection (b) and amendment of newly designated subsection (b), and amendment of subsections (d) and (f) filed 8–9–94; operative 9–8–94 (Register 94, No. 32).
4. Amendment of NOTE filed 8–24–98; operative 9–23–98 (Register 98, No. 35).

§ 554.2. Notice of Election.

(a) Before each election for a Board member identified in Government Code 20090, subdivision (g) or a special election to fill a vacancy pursuant to Government Code section 20095, the Board shall adopt a Notice of Election. The complete text of the Notice of Election shall be adopted as an agenda item at a regularly noticed public meeting of the Board.

(b) The Notice of Election shall contain:

i. A statement of whether, at the time of the adoption of the Notice of Election, the incumbent intends to be a candidate for reelection, pursuant to Government Code section 20096.3;

ii. The election schedule, including without limitation, the date for submission of Nomination Petition forms, Nomination Acceptance/Ballot Designation forms, and the dates of the election pursuant to this section and section 554.3 of this article;

iii. Eligibility criteria for candidates and voters pursuant to Government Code section 20090, subdivision (g);

iv. Candidate nomination and election procedures as provided in section 554.3 of this article;

v. Information required by the Nomination Petition as provided in section 554.3, subdivisions (b) and (c), of this article;

vi. The minimum number of valid original signatures required for nomination as a candidate pursuant to section 554.3, subdivision (e) of this article; and

vii. Such other information as determined by the Board at the noticed public meeting.

(c) The election schedule shall provide the Board adequate time and flexibility to accommodate the nomination and candidate statement arbitration processes, various administrative procedures and voting periods, including the opportunity for a run-off election, if necessary, and to seat the newly elected Board members by statutory deadlines. In no event shall ballots be distributed to voters earlier than 60 days after the adoption of the original Notice of Election.

(d) Any amendment to the Notice of Election, including amendments to the election schedule, shall be set forth in an Amended Notice of Election, adopted at a noticed public meeting of the Board.

(e) The Election Coordinator shall publish the Notice of Election before each election, using methods designed to provide adequate notice to potential candidates and voters, including but not limited to:

a. Posting the Notice of Election on the CalPERS website.

b. Mailing the Notice of Election directly to eligible retired members.

c. Providing employers with sufficient copies of the Notice of Election to allow widespread notice to employees.

(f) Agency Election Officers shall provide notification to eligible active members by direct distribution of the Notice of Election to members or by posting the Notice of Election in employee work areas.

NOTE: Authority cited: Section 20121, Government Code. Reference: Sections 20090, 20095 and 20096, Government Code.

HISTORY

1. New section filed 7-2-82; effective thirtieth day thereafter (Register 82, No. 27).
2. Amendment of NOTE filed 8-24-98; operative 9-23-98 (Register 98, No. 35).
3. Amendment of section and NOTE filed 6-26-2008; operative 7-26-2008 (Register 2008, No. 26).

§ 554.3. Nomination of Candidates [*Effective until 1-16-2002*].

Members shall qualify for nomination if they meet the eligibility criteria adopted in advance of each election and publicized by the Board in the Notice of Election. Nomination shall be by petition, addressed to the Board and signed by members eligible to vote in the election being conducted. The minimum number of petition signatures required shall be determined by the Board and specified in the Notice of Election.

Only those petitions received in the Sacramento office of the System by the date specified in the Notice of Election shall be accepted.

Each nominee shall certify that the nominee accepts the nomination, consents to serve if elected and agrees to abide by a drawing of lots by the Secretary of State in case of a tied vote. Nominees shall return this certification on the form provided by the System by the date specified in the Notice of Election to have their names placed on the ballot.

NOTE: Authority cited: Section 20121, Government Code. Reference: Section 20096, Government Code.

HISTORY

1. New section filed 7-2-82; effective thirtieth day thereafter (Register 82, No. 27).
2. Amendment of NOTE filed 8-24-98; operative 9-23-98 (Register 98, No. 35).
3. Amendment of first paragraph filed 11-30-2000 as an emergency; operative 11-30-2000 (Register 2000, No. 48). A Certificate of Compliance must be transmitted to OAL by 3-30-2001 or emergency language will be repealed by operation of law on the following day.
4. Pursuant to the order of the Superior Court of California, Court of Sacramento, dated April 20, 2001, in *California State Employees Association, Local 1000, SEIU, AFL-CIO, CLC v. Public Employees Retirement System, et al.*, No. 00CS01662, the emergency amendment filed 11-30-2000 has been invalidated and is unenforceable until adopted in full compliance with the Administrative Procedure Act. Reinstatement of section as it existed prior to 11-30-2000 emergency amendment (Register 2001, No. 22).
5. Amendment of first paragraph adopted by CalPERS Board 3-21-2001; submitted to OAL and filed 8-2-2001; operative 1-16-2002 (Register 2001, No. 31). *Text of version effective through January 15, 2002, retained for reference.*

§ 554.3. Nomination of Candidates [*Effective 1-16-2002*].

(a) A person qualifies for nomination if he or she meets the eligibility criteria set forth in Government Code section 20090, subdivision (g), for the Board member position that is the subject of the election. To qualify for candidacy, a nominee must complete the procedures for nomination set forth in the Notice of Election. An individual nominee may not be a candidate for more than one Board member position during any particular election.

(b) Nomination shall be by petition, on the Nomination Petition form(s) provided by the System, addressed to the Board and signed by the nominee. The Nomination Petition form shall include all information required by this section as provided in the Notice of Election or any Amended Notice of Election. The petition shall identify clearly the specific Board member position for which the nominee seeks election. The petition shall also set forth information required to validate the nominee's eligibility, which shall include, the nominee's full name, last four (4) digits of the nominee's Social Security number, and employer or employer at retirement. The nominee shall also provide contact information, such as address, telephone number, fax number, and email address.

(c) A member or retired member shall be eligible to sign a Nomination Petition if he or she meets the eligibility criteria set forth in Government Code section 20090, subdivision (g), for the Board member position that is the subject of the election. Members or retired members signing a Nomination Petition shall provide identifying information for the purpose of validating membership in the System, which shall include, the member's or retired member's full name, last four (4) digits of his or her Social Security number, and employer or employer at retirement.

(d) The Nomination Petition Form shall be provided by the System as follows, pages 1 and 2 are reproduced below; subsequent identically formatted pages will be provided by the System for signature lines numbered 9 – 300:

CalPERS

California Public Employees' Retirement System

NOMINATION PETITION {election name} ELECTION

IMPORTANT: THE NOMINATION PETITION, ENDORSED WITH **AT LEAST 250 ORIGINAL SIGNATURES OF ELIGIBLE** {active/retired} **MEMBERS,** MUST BE RECEIVED BY THE CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM (CalPERS) AT THE ADDRESS BELOW **NO LATER THAN** {date}, **5:00 P.M. FIRM**. THE NOMINATION PETITION PROVIDES FIFTY (50) ADDITIONAL NAME/SIGNATURE LINES. ONLY NOMINATION PETITIONS SUPPLIED BY CalPERS WILL BE ACCEPTABLE.

California Public Employees' Retirement System
Attention: CalPERS Election Coordinator
Lincoln Plaza - 400 Q Street, Room {room number}
P.O. Box 942702
Sacramento, CA 94229-2702
Telephone: (916) 795-3952, local, or (800) 794-2297, toll free

NOMINATION

WE, THE UNDERSIGNED, {active and/or retired} MEMBERS OF THE CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM, PLACE IN NOMINATION {nominee full name} AS A MEMBER TO THE BOARD OF ADMINISTRATION, CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM. THE NOMINEE IS {employed by/retired from} (AGENCY) _____.

_____
Nominee's Street Address

_____
City State Zip Code

(_____)_____
Nominee's Daytime Telephone Number

X X X – X X – ___ ___ ___ ___
Last Four Digits of the Social Security Number*

_____
Signature of Nominee Consenting to Nomination

_____
Nominee's E-Mail Address

(_____)_____
Nominee's Fax Number

INFORMATION NEEDED FOR VERIFICATION OF SYSTEM MEMBERSHIP

NAME * (Type/Print) & SIGNATURE	LAST FOUR DIGITS OF THE SOCIAL SECURITY NUMBER*	{employed by/retired from} (AGENCY NAME)
1. _____ (Type/Print Name Clearly)	**XXX - XX -** _ _ _ _	_____ (Agency Name)
_____ (Signature)		

*** NOTE**: The last name and the last four digits of the social security number information is being sought for the sole purpose of verifying CalPERS membership against the CalPERS database. Be advised that in some cases, the information provided may not be sufficient to verify CalPERS membership or may delay verification of eligible signers. In the event CalPERS membership cannot be verified, the signature will be deemed invalid and not counted.

CalPERS–BRD–74B (01/08)

NOMINATION PETITION {election name} **ELECTION, FOR:**_____

NAME* (Type/Print) & SIGNATURE	LAST FOUR DIGITS OF THE SOCIAL SECURITY NUMBER*	{employed by/retired from} (AGENCY NAME)
2. _____ (Type/Print Name Clearly) _____ (Signature)	XXX - XX - _ _ _ _	_____ (Agency Name)
3. _____ (Type/Print Name Clearly) _____ (Signature)	XXX - XX - _ _ _ _	_____ (Agency Name)
4. _____ (Type/Print Name Clearly) _____ (Signature)	XXX - XX - _ _ _ _	_____ (Agency Name)
5. _____ (Type/Print Name Clearly) _____ (Signature)	XXX - XX - _ _ _ _	_____ (Agency Name)
6. _____ (Type/Print Name Clearly) _____ (Signature)	XXX - XX - _ _ _ _	_____ (Agency Name)
7. _____ (Type/Print Name Clearly) _____ (Signature)	XXX - XX - _ _ _ _	_____ (Agency Name)
8. _____ (Type/Print Name Clearly) _____ (Signature)	XXX - XX - _ _ _ _	_____ (Agency Name)

* **NOTE**: The last name and the last four digits of the social security number information is being sought for the sole purpose of verifying CalPERS membership against the CalPERS database. Be advised that in some cases, the information provided may not be sufficient to verify CalPERS membership or may delay verification of eligible signers. In the event CalPERS membership cannot be verified, the signature will be deemed invalid and not counted.

CalPERS–BRD–74B (01/08)

(e) The minimum number of petition signatures required for candidacy shall be determined by the Board at a noticed public meeting and specified in the Notice of Election. In setting the minimum number of petition signatures, the Board will consider the goals of ensuring candidates have a minimum level of support and providing members and retirees access to candidacy. In no event shall less than 250 valid original signatures be required. Only those petitions received in the Sacramento office of the System by the date and time specified in the Notice of Election shall be accepted.

(f) Each nominee shall certify, on the Nomination Acceptance/Ballot Designation form provided by the System, that he or she accepts the nomination, consents to serve if elected and agrees to abide by a drawing of lots by the Secretary of State in case of a tied vote. If a nominee chooses to submit a Ballot Designation, he or she shall include the proposed Ballot Designation on the Nomination Acceptance/Ballot Designation form. The nominee shall return the Nomination Acceptance/Ballot Designation form by the date and time specified in the Notice of Election to have his or her name placed on the ballot.

(g) The Nomination Acceptance/Ballot Designation Form shall be provided by the System as follows:

CalPERS

NOMINATION ACCEPTANCE/BALLOT DESIGNATION FORM

IMPORTANT: COMPLETE AND FILE THIS FORM NO LATER THAN {date}, 5:00 P.M. FIRM, (CERTIFIED MAIL IS RECOMMENDED) TO:

California Public Employees' Retirement System
ATTENTION: CalPERS Election Coordinator
Lincoln Plaza West - 400 Q Street, Room {room number}
P.O. Box 942702
Sacramento, CA 94229-2702

NOMINATION ACCEPTANCE/NON-ACCEPTANCE

Please select either Item #1 or #2 below by marking the appropriate box.

1. ☐ Upon CalPERS determination that I am a qualified candidate, I accept the nomination for election as a member of the Board of Administration to fill the position whose term will begin January 16, {year}, and expire on January 15, {year}. I consent to serve if elected and agree to abide by the result of a drawing of lots by the Secretary of State in case of a tied vote. I submit the following information:

   Name and proposed Ballot Designation as I wish it shown on the ballot:

   Name: _____
   (Please type or print)

   Proposed Ballot Designation: _____
   (See California Code of Regulations, section 554.10, attached)

   Employer or Employer At Retirement: _____

   Job Classification or Job Classification at Retirement : _____

   Total years of CalPERS-covered service in California: _____

2. ☐ I do not accept the nomination for the terms as set forth above.

I understand that if I decide to withdraw my candidacy after submitting this certified form, if I checked box #1 above, I must notify the CalPERS Board Election Coordinator by phone at (916) 795-3952 and follow-up in writing at the address shown above within ten (10) working days following the nomination acceptance deadline date in order to have my name removed from the ballot and candidate statement information.

➔ Turn this form over. Read and complete the **CANDIDATE STATEMENT/ADDENDUM** and **CERTIFICATION** section.

CANDIDATE STATEMENT/ADDENDUM

I understand that the California Public Employees' Retirement System will distribute with the ballot for the election (and runoff election if one is held) a candidate statement and candidate statement addendum for candidates who prepare them. I understand that the statement(s) must be truthful, and shall contain no obscene, vulgar, profane, libelous, or defamatory matter. The statement(s) shall not include any remarks or questions that are inherently misleading, including rhetorical remarks and questions that are inherently misleading.

I understand that once filed, the statement(s) may not be changed or withdrawn except as provided in CalPERS regulations at Title 2 California Code of Regulations Section 554.4(d), (e) Candidate Statements. I further understand that if candidate statement arbitration is conducted, and if I participate in the candidate statement arbitration, then, as stated in regulation Section 554.4(d), (e)(6):

- I will bear my own expenses in connection with the preparation and presentation of my case at the arbitration proceedings.
- The fees and expenses of the arbitrator and all other expenses of the arbitration shall be borne equally by each candidate participating in the arbitration.

CERTIFICATION

My signature below certifies my understanding of the information on this form regarding nomination acceptance/non-acceptance, withdrawing candidacy and the candidate statement.
My signature below also certifies that I have completed the information on this form.

SIGNATURE: _____

ADDRESS: _____

_____

TELEPHONE NUMBER: (____)_____

DATE: _____

CalPERS–BRD–195 (BACK) (1/08)

(h) The amendments to this section adopted on March 21, 2001 shall become operative on January 16, 2002. The amendments to Section 554.3 filed July 2, 1982, shall remain in effect until that time.

NOTE: Authority cited: Section 20121, Government Code. Reference: Section 20096, Government Code.

HISTORY

1. New section filed 7–2–82; effective thirtieth day thereafter (Register 82, No. 27).
2. Amendment of NOTE filed 8–24–98; operative 9–23–98 (Register 98, No. 35).
3. Amendment of first paragraph filed 11–30–2000 as an emergency; operative 11–30–2000 (Register 2000, No. 48). A Certificate of Compliance must be transmitted to OAL by 3–30–2001 or emergency language will be repealed by operation of law on the following day.
4. Pursuant to the order of the Superior Court of California, Court of Sacramento, dated April 20, 2001, in *California State Employees Association, Local 1000, SEIU, AFL–CIO, CLC v. Public Employees Retirement System, et al.*, No. 00CS01662, the emergency amendment filed 11–30–2000 has been invalidated and is unenforceable until adopted in full compliance with the Administrative Procedure Act. Reinstatement of section as it existed prior to 11–30–2000 emergency amendment (Register 2001, No. 22).
5. Amendment of first paragraph adopted by CalPERS Board 3–21–2001; submitted to OAL and filed 8–2–2001; operative 9–1–2001 (Register 2001, No. 31).
6. Amendment filed 6–26–2008; operative 7–26–2008 (Register 2008, No. 26).

§ 554.4. Candidate Statements [*Effective until 1–16–2002*].

Each candidate for an elective Board member position may provide a statement including the candidate's name, the word "Incumbent" when the candidate is the incumbent in the position for which the election is being held, job classification, employer (or employer at retirement), years of CalPERS–covered service, and a brief factual, biographical description of no more than 150 words of the candidate's education and background, and a list of organizations to which the candidate belongs, and positions held in those organizations. Statements indicating the candidate's opinion or positions on issues of general concern to the System's membership may be included, so long as they are clearly stated as the candidate's opinion or view. The statement must be truthful, and shall not include other information. The statements must not include any remarks or questions that are inherently misleading, including rhetorical remarks and questions that are inherently misleading.

The statement shall be filed with the Election Coordinator at the time the candidate accepts nomination. Once filed, statements may not be changed or withdrawn except by the Election Coordinator. The Election Coordinator shall reject or edit any statement which contains obscene, vulgar, profane, scandalous, untrue, libelous or defamatory matter or which does not meet the statement limitations stated above. The Election Coordinator may request the candidate to verify the truthfulness of any factual statements. The candidate shall provide timely verification upon such request. The Election Coordinator shall remove from the ballot the name of any candidate who fails to respond to such a verification request. Nothing in this section shall be deemed to make candidate statements or the authors thereof free or exempt from any civil or criminal action or penalty because of any false, slanderous or libelous statements offered for printing or distributed to voters. Information contained in the statement is the responsibility of the candidate and the Public Employees' Retirement System accepts no responsibility for the validity of the statement or the contents thereof.

NOTE: Authority cited: Section 20121, Government Code. Reference: Section 20096, Government Code.

HISTORY

1. New section filed 7–2–82; effective thirtieth day thereafter (Register 82, No. 27).
2. Amendment filed 8–9–94; operative 9–8–94 (Register 94, No. 32).
3. Change without regulatory effect amending first paragraph filed 6–12–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 24).
4. Amendment of first paragraph and NOTE filed 8–24–98; operative 9–23–98 (Register 98, No. 35).
5. Amendment filed 11–30–2000 as an emergency; operative 11–30–2000 (Register 2000, No. 48). A Certificate of Compliance must be transmitted to OAL by 3–30–2001 or emergency language will be repealed by operation of law on the following day.
6. Change without regulatory effect correcting subsections (a) and (b) of 11–30–2000 emergency action filed 12–18–2000 pursuant to section 100, title 1, California Code of Regulations (Register 2000, No. 51).
7. Pursuant to the order of the Superior Court of California, Court of Sacramento, dated April 20, 2001, in *California State Employees Association, Local 1000, SEIU, AFL–CIO, CLC v. Public Employees Retirement System, et al.*, No. 00CS01662, the emergency amendment filed 11–30–2000 has been invalidated and is unenforceable until adopted in full compliance with the Administrative Procedure Act. Reinstatement of section as it existed prior to 11–30–2000 emergency amendment (Register 2001, No. 22).
8. Amendments adopted by CalPERS Board 3–21–2001; submitted to OAL and filed 8–2–2001; operative 1–16–2002 (Register 2001, No. 31). *Text of version effective through January 15, 2002, retained for reference.*

§ 554.4. Candidate Statements [*Effective 1–16–2002*].

(a) Each candidate for an elective Board member position may provide a statement including the candidate's name, the word "Incumbent" when the candidate is the incumbent in the position for which the election is being held, job classification, employer (or employer at retirement), years of CalPERS–covered service, and a general statement of no more than 200 words. The statement must be truthful, and shall contain no obscene, vulgar, profane, libelous or defamatory matter. The statement shall not include any remarks or questions that are inherently misleading, including rhetorical remarks and questions that are inherently misleading.

(b) The statement shall be filed with the Election Coordinator at the time the candidate accepts nomination. Once filed, statements may not be changed or withdrawn except as provided herein.

(c) Within 7 calendar days following the end of the nomination period, the Election Coordinator shall distribute all candidate statements to each candidate in the respective contest. Each candidate shall have 10 calendar days (or such longer period as the Election Coordinator may provide to all candidates) after the distribution of the candidate statements by the Election Coordinator to submit to the Election Coordinator an addendum to the candidate's statement of no more than 100 words. No addenda may change the initial candidate statement, but addenda, if any, shall be in addition to the initial candidate statement. The Election Coordinator shall, within 7 calendar days after the date in which all addenda are due, provide all candidates with all candidate statements including addenda if any.

(d) No statement may be changed or withdrawn, except that:

(1) a candidate who withdraws from the election may withdraw his/her statement at any time prior to printing, or,

(2) a candidate statement may be modified in accordance with a determination of an arbitration conducted in accordance with subdivision (e) below.

(e) Any controversy or claim arising out of or relating to a proposed candidate's statement's compliance with the provisions of this section shall be determined by a third–party arbitrator conducting arbitration in accordance with the laws of the State of California and as provided below, and the Labor Arbitration rules of the American Arbitration Association (AAA) in effect on November 15, 2000, to the extent the AAA rules are not in conflict with this subdivision.

(1) A written request for arbitration related to any candidate's statement must be filed with CalPERS Election Coordinator by a candidate not later than 5 working days after the Election Coordinator's mailing of candidate statements pursuant to subdivision (c) above. Upon the Election Coordinator's receipt of a request for arbitration, the Board or its delegate shall designate an independent, neutral third–party arbitrator to administer the arbitration. No board member who is a candidate for election that is the subject of the arbitration may participate in the selection of the arbitrator except as specified in subdivisions (2–6) below.

(2) A request for arbitration shall set forth the nature of the controversy or claim, a brief statement of the basis of the controversy or claim, and the remedy sought.

(3) Upon receipt of a request for arbitration under this section, the Election Coordinator shall mail a copy of the request to all candidates for the same seat and to the third–party arbitrator. Within seven days of mailing the request for arbitration by the Election Coordinator, any candidate for the seat that is the subject of the arbitration may request to participate

in the arbitration by filing a written request with the Election Coordinator, which the Coordinator shall promptly forward to the third party arbitrator.

(4) The third–party arbitrator shall promptly submit simultaneously to each party requesting to participate an identical list of names of three persons chosen from its panel of arbitrators. Each party shall have seven days from the date the list is submitted in which to file an objection with the third–party arbitrator to any name, number the remaining names to indicate order of preference, and return the list to the third–party arbitrator. From among the persons for whom no objection has been filed, and in accordance with the designated order of preference, the third–party arbitrator shall invite an arbitrator to serve. If every proposed arbitrator receives an objection, or if the arbitrator selected declines or is unable to act, or if for any other reason the appointment cannot be made from the submitted lists, the third–party arbitrator shall make the appointment from among other members of the arbitrator's panel without the submission of any additional list.

(5) Any arbitration shall be held in the City of Sacramento. Any candidate for the same office may participate in the arbitration by filing notice with CalPERS. The determination of the arbitrator shall be rendered within 30 days of selection of an arbitrator and shall be final and binding on CalPERS and candidates for office.

(6) Each candidate participating in the arbitration shall bear its own expenses in connection with the preparation and presentation of his or her case at the arbitration proceedings. The fees and expenses of the arbitrator and all other expenses of the arbitration shall be borne equally by each candidate participating in the arbitration.

(f) The Election Coordinator shall distribute all deadlines and instructions related to candidate statements in writing to all candidates.

(g) Nothing in this section shall be deemed to make candidate statements or the authors thereof free or exempt from any civil or criminal action or penalty because of any statements offered for printing or distributed to voters. Information contained in the statement is the responsibility of the candidate and the California Public Employees' Retirement System accepts no responsibility for the validity of the statement or the contents thereof.

The amendments to this section adopted on March 21, 2001 shall become operative on January 16, 2002. The amendments to Section 554.4 filed August 24, 1998 shall remain in effect until that time.

NOTE: Authority cited: Section 20121, Government Code. Reference: Section 20096, Government Code.

HISTORY

1. New section filed 7–2–82; effective thirtieth day thereafter (Register 82, No. 27).
2. Amendment filed 8–9–94; operative 9–8–94 (Register 94, No. 32).
3. Change without regulatory effect amending first paragraph filed 6–12–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 24).
4. Amendment of first paragraph and NOTE filed 8–24–98; operative 9–23–98 (Register 98, No. 35).
5. Amendment filed 11–30–2000 as an emergency; operative 11–30–2000 (Register 2000, No. 48). A Certificate of Compliance must be transmitted to OAL by 3–30–2001 or emergency language will be repealed by operation of law on the following day.
6. Change without regulatory effect correcting subsections (a) and (b) of 11–30–2000 emergency action filed 12–18–2000 pursuant to section 100, title 1, California Code of Regulations (Register 2000, No. 51).
7. Pursuant to the order of the Superior Court of California, Court of Sacramento, dated April 20, 2001, in *California State Employees Association, Local 1000, SEIU, AFL–CIO, CLC v. Public Employees Retirement System, et al.*, No. 00CS01662, the emergency amendment filed 11–30–2000 has been invalidated and is unenforceable until adopted in full compliance with the Administrative Procedure Act. Reinstatement of section as it existed prior to 11–30–2000 emergency amendment (Register 2001, No. 22).
8. Amendments adopted by CalPERS Board 3–21–2001; submitted to OAL and filed 8–2–2001; operative 1–16–2002 (Register 2001, No. 31).

§ 554.5. Ballot Distribution.

(a) Except as provided in paragraph (b), below, the Election Coordinator shall cause ballots, candidate statements and postage paid return envelopes to be mailed by the System directly to the residence of each retired member, and to each eligible active member for whom the Board has a residence address and is permitted by law to use such address to mail these election materials. For those eligible active members for whom the Board does not have access to a legally permissible residence address, the Election Coordinator shall forward their ballots, candidate statements, and postage paid return envelopes to the Agency Election Officer with instructions to ensure that these materials are immediately provided to the identified member(s). For purposes of this section, "eligible active member" means a member of the System who is employed, on the date specified in the Notice of Election's criteria for voter eligibility, by an employer participating in the System.

Marked ballots shall be returned to the location designated by PERS in the postage paid return envelope provided by the System, or another comparable envelope, and the reverse side shall be signed by the voter certifying under penalty of perjury that the voter is eligible to vote in the election; otherwise the ballot shall not be valid.

(b) Where only one candidate has been nominated in accordance with section 554.3, the Election Coordinator shall, upon verification of the signatures presented in the nominating petition and upon the candidate's certification of his/her nomination acceptance, cancel the remaining election procedures and designate the single candidate to be certified as elected by the Secretary of State. Upon the Secretary of State's certification, the Board member elected through this process shall take his/her office on the day provided for by statute.

NOTE: Authority cited: Sections 20096 and 20121, Government Code. Reference: Section 20096, Government Code.

HISTORY

1. New section filed 7–2–82; effective thirtieth day thereafter (Register 82, No. 27).
2. Amendment filed 7–9–84; effective thirtieth day thereafter (Register 84, No. 28).
3. Amendment filed 8–9–94; operative 9–8–94 (Register 94, No. 32).
4. Amendment of newly designated subsection (a) and new subsection (b) filed 7–17–95 as an emergency; operative 7–17–95 (Register 95, No. 29). A Certificate of Compliance must be transmitted to OAL by 11–14–95 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7–17–95 order including amendment of NOTE transmitted to OAL 10–27–95 and filed 12–1–95 (Register 95, No. 48).
6. Amendment of NOTE filed 8–24–98; operative 9–23–98 (Register 98, No. 35).

§ 554.6. Ballot Counting [*Effective until 1–16–2002*].

Signed ballot envelopes shall not be opened until the deadline for final receipt of valid ballots. On the date specified in the Notice of Election at the location designated by PERS, the sealed signed envelopes containing the valid ballots shall be opened and canvassed publicly by the System. The candidate having the highest number of votes, or the winning lot as drawn by the Secretary of State in case of a tie vote, or the single candidate as provided in section 554.5(b), shall be certified by the Secretary of State as having been elected.

NOTE: Authority cited: Section 20121, Government Code. Reference: Section 20096, Government Code.

HISTORY

1. New section filed 7–2–82; effective thirtieth day thereafter (Register 82, No. 27).
2. Amendment filed 7–9–84; effective thirtieth day thereafter (Register 84, No. 28).
3. Amendment filed 8–9–94; operative 9–8–94 (Register 94, No. 32).
4. Amendment filed 7–17–95 as an emergency; operative 7–17–95 (Register 95, No. 29). A Certificate of Compliance must be transmitted to OAL by 11–14–95 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7–17–95 order transmitted to OAL 10–27–95 and filed 12–1–95 (Register 95, No. 48).
6. Amendment of NOTE filed 8–24–98; operative 9–23–98 (Register 98, No. 35).
7. Amendment of section heading and section filed 11–30–2000 as an emergency; operative 11–30–2000 (Register 2000, No. 48). A Certificate of Compliance must be transmitted to OAL by 3–30–2001 or emergency language will be repealed by operation of law on the following day.
8. Change without regulatory effect correcting subsection (a) of 11–30–2000 emergency action filed 12–18–2000 pursuant to section 100, title 1, California Code of Regulations (Register 2000, No. 51).
9. Pursuant to the order of the Superior Court of California, Court of Sacramento, dated April 20, 2001, in *California State Employees Association, Local 1000, SEIU, AFL–CIO, CLC v. Public Employees Retirement System, et al.*, No. 00CS01662, the emergency amendment filed 11–30–2000 has been invalidated and is unenforceable until adopted in full compliance with the Administrative

Procedure Act. Reinstatement of section as it existed prior to 11–30–2000 emergency amendment (Register 2001, No. 22).

10. Amendment of section heading, section and NOTE adopted by CalPERS Board 3–21–2001; submitted to OAL and filed 8–2–2001; operative 1–16–2002 (Register 2001, No. 31). *Text of version effective through January 15, 2002, retained for reference.*

§ 554.6. Ballot Counting and Runoff Election [*Effective 1–16–2002*].

(a) Signed ballot envelopes shall not be opened until the deadline for final receipt of valid ballots. On the date specified in the Notice of Election at the location designated by CalPERS, the sealed signed envelopes containing the valid ballots shall be opened and canvassed publicly by an independent, neutral agent appointed by CalPERS for the purpose. The candidate having a majority of votes, or the winning lot as drawn by the Secretary of State in case of a tie vote, or the single candidate as provided in section 554.5(b), shall be certified by the Secretary of State as having been elected.

(b) Where the Board members elected under Government Code section 20090, subdivision (g)(1) are elected in the same election, the two positions shall be separately designated Position A and Position B. The position held by Charles Valdes on November 15, 2000 shall thereafter be designated Position A. The position held by William B. Rosenberg on November 15, 2000 shall thereafter be designated Position B.

(c) The candidate receiving the majority vote for each position shall be certified by the Secretary of State as having been elected. In the event that no candidate for any position receives a majority of votes (i.e., 50% of votes cast plus one vote), a runoff election will be conducted involving the two candidates who received the highest number of votes.

(d) The amendments to this section adopted on March 21, 2001 shall become operative on January 16, 2002. The amendments to this section filed December 1, 1995 shall remain in effect until that time.

NOTE: Authority cited: Section 20121, Government Code. Reference: Sections 20090 and 20096, Government Code.

HISTORY

1. New section filed 7–2–82; effective thirtieth day thereafter (Register 82, No. 27).
2. Amendment filed 7–9–84; effective thirtieth day thereafter (Register 84, No. 28).
3. Amendment filed 8–9–94; operative 9–8–94 (Register 94, No. 32).
4. Amendment filed 7–17–95 as an emergency; operative 7–17–95 (Register 95, No. 29). A Certificate of Compliance must be transmitted to OAL by 11–14–95 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7–17–95 order transmitted to OAL 10–27–95 and filed 12–1–95 (Register 95, No. 48).
6. Amendment of NOTE filed 8–24–98; operative 9–23–98 (Register 98, No. 35).
7. Amendment of section heading and section filed 11–30–2000 as an emergency; operative 11–30–2000 (Register 2000, No. 48). A Certificate of Compliance must be transmitted to OAL by 3–30–2001 or emergency language will be repealed by operation of law on the following day.
8. Change without regulatory effect correcting subsection (a) of 11–30–2000 emergency action filed 12–18–2000 pursuant to section 100, title 1, California Code of Regulations (Register 2000, No. 51).
9. Pursuant to the order of the Superior Court of California, Court of Sacramento, dated April 20, 2001, in *California State Employees Association, Local 1000, SEIU, AFL–CIO, CLC v. Public Employees Retirement System, et al.*, No. 00CS01662, the emergency amendment filed 11–30–2000 has been invalidated and is unenforceable until adopted in full compliance with the Administrative Procedure Act. Reinstatement of section as it existed prior to 11–30–2000 emergency amendment (Register 2001, No. 22).
10. Amendment of section heading, section and NOTE adopted by CalPERS Board 3–21–2001; submitted to OAL and filed 8–2–2001; operative 1–16–2002 (Register 2001, No. 31).
11. Change without regulatory effect designating last two paragraphs as subsections (c) and (d) filed 7–11–2002 pursuant to section 100, title 1, California Code of Regulations (Register 2002, No. 28).

§ 554.7. Notice of Election Results [*Effective until 1–16–2002*].

(a) Within three working days after the public ballot canvassing, or after verification of the nominating signatures and certification of nomination acceptance as provided in section 554.5(b), the Election Coordinator shall post the unofficial election results and transmit these unofficial results to each candidate, utilizing express mail services.

(b) Following certification by the Secretary of State, the Election Coordinator shall notify the Executive Officer, candidates, Board members, staff and other interested parties of the official, certified results. Notification to the newly elected Board member shall include an Oath of Office form. This form is to be signed by the member in the presence of a notary public and returned to the System. The Election Coordinator shall file the Oath with the Secretary of State.

(c) Election results shall be publicized to agencies and members in a manner prescribed by the Board.

NOTE: Authority cited: Section 20121, Government Code. Reference: Section 20096, Government Code.

HISTORY

1. New section filed 7–2–82; effective thirtieth day thereafter (Register 82, No. 27).
2. Amendment filed 7–9–84; effective thirtieth day thereafter (Register 84, No. 28).
3. New subsection (a), designation and amendment of subsection (b), and designation of subsection (c) filed 8–9–94; operative 9–8–94 (Register 94, No. 32).
4. Amendment of subsection (a) filed 7–17–95 as an emergency; operative 7–17–95 (Register 95, No. 29). A Certificate of Compliance must be transmitted to OAL by 11–14–95 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7–17–95 order including amendment of subsection (b) transmitted to OAL 10–27–95 and filed 12–1–95 (Register 95, No. 48).
6. Amendment of NOTE filed 8–24–98; operative 9–23–98 (Register 98, No. 35).
7. Amendment of subsection (a) filed 11–30–2000 as an emergency; operative 11–30–2000 (Register 2000, No. 48). A Certificate of Compliance must be transmitted to OAL by 3–30–2001 or emergency language will be repealed by operation of law on the following day.
8. Change without regulatory effect correcting subsection (a) of 11–30–2000 emergency action filed 12–18–2000 pursuant to section 100, title 1, California Code of Regulations (Register 2000, No. 51).
9. Pursuant to the order of the Superior Court of California, Court of Sacramento, dated April 20, 2001, in *California State Employees Association, Local 1000, SEIU, AFL–CIO, CLC v. Public Employees Retirement System, et al.*, No. 00CS01662, the emergency amendment filed 11–30–2000 has been invalidated and is unenforceable until adopted in full compliance with the Administrative Procedure Act. Reinstatement of section as it existed prior to 11–30–2000 emergency amendment (Register 2001, No. 22).
10. Amendment of subsection (a) adopted by CalPERS Board 3–21–2001; submitted to OAL and filed 8–2–2001; operative 1–16–2002 (Register 2001, No. 31). *Text of version effective through January 15, 2002, retained for reference.*

§ 554.7. Notice of Election Results [*Effective 1–16–2002*].

(a) Within three working days after the public ballot canvassing of the election and runoff election, if any, or after verification of the nominating signatures and certification of nomination acceptance as provided in section 554.5(b), the Election Coordinator shall post the unofficial election results and transmit these unofficial results to each candidate, utilizing express mail services.

(b) Following certification by the Secretary of State, the Election Coordinator shall notify the Executive Officer, candidates, Board members, staff and other interested parties of the official, certified results. Notification to the newly elected Board member shall include an Oath of Office form. This form is to be signed by the member in the presence of a notary public and returned to the System. The Election Coordinator shall file the Oath with the Secretary of State.

(c) Election results shall be publicized to agencies and members in a manner prescribed by the Board.

The amendments to this section adopted on March 21, 2001 shall become operative on January 16, 2002. The amendments to this section filed July 17, 1995 shall remain in effect until that time.

NOTE: Authority cited: Section 20121, Government Code. Reference: Section 20096, Government Code.

HISTORY

1. New section filed 7–2–82; effective thirtieth day thereafter (Register 82, No. 27).
2. Amendment filed 7–9–84; effective thirtieth day thereafter (Register 84, No. 28).
3. New subsection (a), designation and amendment of subsection (b), and designation of subsection (c) filed 8–9–94; operative 9–8–94 (Register 94, No. 32).
4. Amendment of subsection (a) filed 7–17–95 as an emergency; operative 7–17–95 (Register 95, No. 29). A Certificate of Compliance must be transmitted to OAL by 11–14–95 or emergency language will be repealed by operation of law on the following day.

5. Certificate of Compliance as to 7–17–95 order including amendment of subsection (b) transmitted to OAL 10–27–95 and filed 12–1–95 (Register 95, No. 48).
6. Amendment of NOTE filed 8–24–98; operative 9–23–98 (Register 98, No. 35).
7. Amendment of subsection (a) filed 11–30–2000 as an emergency; operative 11–30–2000 (Register 2000, No. 48). A Certificate of Compliance must be transmitted to OAL by 3–30–2001 or emergency language will be repealed by operation of law on the following day.
8. Change without regulatory effect correcting subsection (a) of 11–30–2000 emergency action filed 12–18–2000 pursuant to section 100, title 1, California Code of Regulations (Register 2000, No. 51).
9. Pursuant to the order of the Superior Court of California, Court of Sacramento, dated April 20, 2001, in *California State Employees Association, Local 1000, SEIU, AFL–CIO, CLC v. Public Employees Retirement System, et al.*, No. 00CS01662, the emergency amendment filed 11–30–2000 has been invalidated and is unenforceable until adopted in full compliance with the Administrative Procedure Act. Reinstatement of section as it existed prior to 11–30–2000 emergency amendment (Register 2001, No. 22).
10. Amendment of subsection (a) adopted by CalPERS Board 3–21–2001; submitted to OAL and filed 8–2–2001; operative 1–16–2002 (Register 2001, No. 31).

§ 554.8. Recount of an Election [*Effective until 1–16–2002*].

(a) A request for a recount shall not delay the seating of an elected Board member. Such elected Board member shall take office, in accordance with the published election schedule, subject to the potential termination of such Board membership as a result of the recount.

(b) A candidate in the affected Board member election may file a written request with the Election Coordinator at the Sacramento Office of PERS for recount within ten working days following the mailing of the unofficial election results; otherwise, there shall be no opportunity for requesting a recount and the certified election results stand as the official results.

(c) A written request for a recount shall specify the election to be recounted, shall be signed by the candidate requesting the recount, and may specify any other relevant material to be examined.

(d) The Election Coordinator shall set a date for the recount upon receipt of the written request, and shall confirm this date upon receipt of the estimated cost to conduct the recount. The estimated cost of conducting a recount will include the system's administrative cost and the costs of the ballot counting contractor, if applicable. Legal tender of the amount of the estimated cost of conducting the recount shall be submitted by the candidate requesting the recount to the Election Coordinator within three working days following notification of the estimated cost to conduct the recount; otherwise, the recount shall be termined.

(e) If the results of the recount do not change the ranking of the candidates (either the unofficial ranking or the certified ranking, depending upon whether the unofficial results have been certified by the Secretary of State as of the date of the recount), then the unofficial results shall, upon receipt of Secretary of State certification, stand as the official election results. In this case, if the actual cost of the recount is less than the estimated cost deposited by the requester, PERS shall refund the amount which exceeds the actual cost; if the actual cost of the recount is more than the estimated cost, PERS shall invoice the requester for the difference.

(f) If the results of the recount do change the ranking of the candidates (either the unofficial ranking or the certified ranking, depending upon whether the unofficial results have been certified by the Secretary of State as of the date of the recount), then the recount results shall be resubmitted to the Secretary of State for certification as the official election results. In this case, PERS shall refund the amount of the estimated cost deposited by the requester.

NOTE: Authority cited: Section 20121, Government Code. Reference: Section 20096, Government Code.

HISTORY

1. New section filed 8–9–94; operative 9–8–94 (Register 94, No. 32).
2. Change without regulatory effect amending subsection (f) filed 6–12–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 24).
3. Amendment of NOTE filed 8–24–98; operative 9–23–98 (Register 98, No. 35).
4. Amendment of subsections (b), (e) and (f) filed 11–30–2000 as an emergency; operative 11–30–2000 (Register 2000, No. 48). A Certificate of Compliance must be transmitted to OAL by 3–30–2001 or emergency language will be repealed by operation of law on the following day.
5. Change without regulatory effect correcting subsection (b) of 11–30–2000 emergency action filed 12–18–2000 pursuant to section 100, title 1, California Code of Regulations (Register 2000, No. 51).
6. Pursuant to the order of the Superior Court of California, Court of Sacramento, dated April 20, 2001, in *California State Employees Association, Local 1000, SEIU, AFL–CIO, CLC v. Public Employees Retirement System, et al.*, No. 00CS01662, the emergency amendment filed 11–30–2000 has been invalidated and is unenforceable until adopted in full compliance with the Administrative Procedure Act. Reinstatement of section as it existed prior to 11–30–2000 emergency amendment (Register 2001, No. 22).
7. Amendment of subsections (b), (e) and (f) adopted by CalPERS Board 3–21–2001; submitted to OAL and filed 8–2–2001; operative 1–16–2002 (Register 2001, No. 31). *Text of version effective through January 15, 2002, retained for reference.*

§ 554.8. Recount of an Election [*Effective 1–16–2002*].

(a) A request for a recount shall not delay the seating of an elected Board member. Such elected Board member shall take office, in accordance with the published election schedule, subject to the potential termination of such Board membership as a result of the recount.

(b) A candidate in the affected Board member election may file a written request with the Election Coordinator at the Sacramento Office of CalPERS for recount within ten working days following the mailing of the unofficial election results of the runoff election, if any, otherwise, of the election; otherwise, there shall be no opportunity for requesting a recount and the certified election results stand as the official results.

(c) A written request for a recount shall specify the election to be recounted, shall be signed by the candidate requesting the recount, and may specify any other relevant material to be examined.

(d) The Election Coordinator shall set a date for the recount upon receipt of the written request, and shall confirm this date upon receipt of the estimated cost to conduct the recount. The estimated cost of conducting a recount will include the system's administrative cost and the costs of the ballot counting contractor, if applicable. Legal tender of the amount of the estimated cost of conducting the recount shall be submitted by the candidate requesting the recount to the Election Coordinator within three working days following notification of the estimated cost to conduct the recount; otherwise, the recount shall be termined.

(e) If the results of the recount do not change the ranking of the candidates (either the unofficial ranking or the certified ranking, depending upon whether the unofficial results have been certified by the Secretary of State as of the date of the recount), then the unofficial results shall, upon receipt of Secretary of State certification, stand as the official election results. In this case, if the actual cost of the recount is less than the estimated cost deposited by the requester, CalPERS shall refund the amount which exceeds the actual cost; if the actual cost of the recount is more than the estimated cost, CalPERS shall invoice the requester for the difference.

(f) If the results of the recount do change the ranking of the candidates (either the unofficial ranking or the certified ranking, depending upon whether the unofficial results have been certified by the Secretary of State as of the date of the recount), then the recount results shall be resubmitted to the Secretary of State for certification as the official election results. In this case, CalPERS shall refund the amount of the estimated cost deposited by the requester.

The amendments to this section adopted on March 21, 2001 shall become operative on January 16, 2002. The amendments to this section filed August 24, 1998 shall remain in effect until that time.

NOTE: Authority cited: Section 20121, Government Code. Reference: Section 20096, Government Code.

HISTORY

1. New section filed 8–9–94; operative 9–8–94 (Register 94, No. 32).
2. Change without regulatory effect amending subsection (f) filed 6–12–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 24).
3. Amendment of NOTE filed 8–24–98; operative 9–23–98 (Register 98, No. 35).
4. Amendment of subsections (b), (e) and (f) filed 11–30–2000 as an emergency; operative 11–30–2000 (Register 2000, No. 48). A Certificate of Compliance must be transmitted to OAL by 3–30–2001 or emergency language will be repealed by operation of law on the following day.

5. Change without regulatory effect correcting subsection (b) of 11–30–2000 emergency action filed 12–18–2000 pursuant to section 100, title 1, California Code of Regulations (Register 2000, No. 51).
6. Pursuant to the order of the Superior Court of California, Court of Sacramento, dated April 20, 2001, in *California State Employees Association, Local 1000, SEIU, AFL–CIO, CLC v. Public Employees Retirement System, et al.*, No. 00CS01662, the emergency amendment filed 11–30–2000 has been invalidated and is unenforceable until adopted in full compliance with the Administrative Procedure Act. Reinstatement of section as it existed prior to 11–30–2000 emergency amendment (Register 2001, No. 22).
7. Amendment of subsections (b), (e) and (f) adopted by CalPERS Board 3–21–2001; submitted to OAL and filed 8–2–2001; operative 1–16–2002 (Register 2001, No. 31).

§ 554.9. Protest of an Election.

(a) The filing of a protest shall not delay the seating of an elected Board member. Such elected Board member shall take office, in accordance with the published election schedule, subject to the potential termination of such Board membership as a result of the protest. Any newly elected member, as the result of a protest, shall hold office for a period equal to the remainder of the term of the vacated office.

(b) Any party who is an active or retired member of CalPERS, eligible to vote in the applicable Board member election, may protest a runoff election, if any, or an election, if no runoff election is conducted. A protest shall be filed with the Election Coordinator at the Sacramento Office of CalPERS within ten working days following the mailing of the certified election results. A protest shall be in writing, shall be identified using the word "protest", shall specify the election, and shall state the grounds of the protest and suggested remedy.

(c) Upon receipt of a valid and timely protest, the Election Coordinator shall mail a copy of the request to all candidates for the same seat. The Board or its designee shall appoint an independent, neutral agent which shall designate a Protest Panel using the following process. The independent agent shall promptly submit simultaneously to each candidate for the same office that is subject of the protest an identical list of names of at least five persons chosen from its panel of arbitrators. Each candidate shall have seven days from the date the list is submitted in which to file an objection with the agent to any name, number the remaining names to indicate order of preference, and return the list to the agent. From among the persons for whom no objection has been filed, and in accordance with the designated order of preference, the agent shall invite members to serve on the Protest Panel. If every proposed panel member receives an objection, or if a panel member selected declines or is unable to act, or if any other reason the appointment cannot be made from the submitted list, the agent shall make the appointment from among other members of the agent's panel of arbitrators without the submission of any additional list. No Board member who is a candidate for election that is the subject of the protest may participate in the selection of the Protest Panel. The decision of the Protest Panel shall be final. The Protest Panel shall be comprised of no less than three people, all of whom are neither employed by CalPERS nor otherwise interested in the outcome of the election that is the subject of the protest. For purpose of the foregoing sentence only, membership in CalPERS does not, by itself, constitute an "interest in the outcome of the election." The Protest Panel shall consider written and/or oral arguments submitted by the protestor and any other interested party, including the Board's staff. Any oral proceedings shall be held in the City of Sacramento. The determination of the Protest Panel shall be rendered within 30 days of selection of the Panel and shall be final and binding on CalPERS and candidates for office. Other procedures, including those for receiving and considering arguments and factual allegations, shall be determined by the Protest Panel in its sole discretion. A protest shall only be granted upon a finding that Board–adopted election procedures were not substantially followed and that, without this lack of substantial compliance, the election outcome would likely have been different.

NOTE: Authority cited: Section 20121, Government Code. Reference: Section 20121, Government Code; *Duva, Calif. School Employees' Assoc. v. PERS., et al.*, 1993 Sacramento Superior Court Case No. 375842.

HISTORY

1. New section filed 8–9–94; operative 9–8–94 (Register 94, No. 32).
2. Amendment of NOTE filed 8–24–98; operative 9–23–98 (Register 98, No. 35).
3. Amendment filed 11–30–2000 as an emergency; operative 11–30–2000 (Register 2000, No. 48). A Certificate of Compliance must be transmitted to OAL by 3–30–2001 or emergency language will be repealed by operation of law on the following day.
4. Change without regulatory effect correcting subsections (b) and (c) of 11–30–2000 emergency action filed 12–18–2000 pursuant to section 100, title 1, California Code of Regulations (Register 2000, No. 51).
5. Pursuant to the order of the Superior Court of California, Court of Sacramento, dated April 20, 2001, in *California State Employees Association, Local 1000, SEIU, AFL–CIO, CLC v. Public Employees Retirement System, et al.*, No. 00CS01662, the emergency amendment filed 11–30–2000 has been invalidated and is unenforceable until adopted in full compliance with the Administrative Procedure Act. Reinstatement of section as it existed prior to 11–30–2000 emergency amendment (Register 2001, No. 22).
6. Amendment filed 8–2–2001; operative 9–1–2001 (Register 2001, No. 31).

§ 554.10. Ballot Designations [*Effective until 1–16–2002*].

Each candidate for an elective Board member position may choose a Ballot Designation at the time he or she certifies acceptance of nomination as a candidate. The Ballot Designation will be printed below the candidate's name, on the ballots that are mailed to each eligible voter. The Ballot Designation must be accurate and not misleading.

Each candidate must choose a single Ballot Designation, in conformity with the following guidelines:

(a) If the candidate is already a Board member at the time he or she certifies acceptance of nomination, then the candidate may use the single word "Incumbent" and this is the only time it may be used as a designation. The word "Incumbent" may not be used in conjunction with the candidate's title as a CalPERS Board member.

(b) If the candidate holds an elected office at any level of government, or is an elected or appointed judge for a court of record in California, at the time he or she certifies acceptance of nomination, he or she may use the title of that office. If the candidate is retired from that office, the title may still be used, if preceded by the word "Retired." The candidate shall not make any other reference to a prior elected or appointed office, such as by the word "former" or "ex."

(c) The candidate may designate the principal profession or occupation in which he or she is engaged, at the time he or she certifies acceptance of nomination. This designation may be general or specific, but it shall not exceed three words in length. If the candidate is retired from the principal profession or occupation, it may still be designated if preceded by the word "Retired." Any geographic reference that is part of the designation shall count as one word, but the word "Retired" shall not count. The candidate shall not make any other reference to prior professional or occupational status, such as by the word "former" or "ex."

(d) The candidate shall not use the Ballot Designation to state, or imply, an endorsement or alliance. This means the designation cannot name a political party or any racial, religious or ethnic group. The candidate shall not use the Ballot Designation to state, or imply, a particular level of skill or performance. This means the designation cannot be modified by adjectives such as outstanding, leading, expert, virtuous, or eminent.

The determination of whether or not a Ballot Designation conforms to these guidelines shall be made in the sole discretion of the Election Coordinator. If a Ballot Designation does not conform, in whole or in part, it shall be reformed by the Election Coordinator with prior notice to the candidate, before it is printed on the ballots.

The Election Coordinator will provide each candidate with written criteria for choosing a Ballot Designation in conformity with these guidelines, including examples of designations that were used in prior elections. The choice of Ballot Designation must be made by each candidate, and the Public Employees' Retirement System accepts no responsibility for the content or validity of a given Ballot Designation.

NOTE: Authority cited: Section 20121, Government Code. Reference: Section 20096, Government Code.

HISTORY

1. New section filed 8–24–98; operative 9–23–98 (Register 98, No. 35).
2. Amendment of subsections (a) and (d) filed 11–30–2000 as an emergency; operative 11–30–2000 (Register 2000, No. 48). A Certificate of Compliance must be transmitted to OAL by 3–30–2001 or emergency language will be repealed by operation of law on the following day.
3. Change without regulatory effect correcting subsection (a) of 11–30–2000 emergency action filed 12–18–2000 pursuant to section 100, title 1, California Code of Regulations (Register 2000, No. 51).

4. Pursuant to the order of the Superior Court of California, Court of Sacramento, dated April 20, 2001, in *California State Employees Association, Local 1000, SEIU, AFL–CIO, CLC v. Public Employees Retirement System, et al.*, No. 00CS01662, the emergency amendment filed 11–30–2000 has been invalidated and is unenforceable until adopted in full compliance with the Administrative Procedure Act. Reinstatement of section as it existed prior to 11–30–2000 emergency amendment (Register 2001, No. 22).
5. Amendment of subsections (a) and (d) adopted by CalPERS Board 3–21–2001; submitted to OAL and filed 8–2–2001; operative 1–16–2002 (Register 2001, No. 31). *Text of version effective through January 15, 2002, retained for reference.*

§ 554.10. Ballot Designations [*Effective 1–16–2002*].

Each candidate for an elective Board member position may choose a Ballot Designation at the time he or she certifies acceptance of nomination as a candidate. The Ballot Designation will be printed below the candidate's name, on the ballots that are mailed to each eligible voter. The Ballot Designation must be accurate and not misleading.

Each candidate must choose a single Ballot Designation, in conformity with the following guidelines:

(a) If the candidate already holds the Board member position to which he or she is seeking election, then the candidate may use the single word "Incumbent" and this is the only time it may be used as a designation. The word "Incumbent" may not be used in conjunction with the candidate's title as a CalPERS Board member.

(b) If the candidate holds an elected office at any level of government, or is an elected or appointed judge for a court of record in California, at the time he or she certifies acceptance of nomination, he or she may use the title of that office. If the candidate is retired from that office, the title may still be used, if preceded by the word "Retired." The candidate shall not make any other reference to a prior elected or appointed office, such as by the word "former" or "ex."

(c) The candidate may designate the principal profession or occupation in which he or she is engaged, at the time he or she certifies acceptance of nomination. This designation may be general or specific, but it shall not exceed three words in length. If the candidate is retired from the principal profession or occupation, it may still be designated if preceded by the word "Retired." Any geographic reference that is part of the designation shall count as one word, but the word "Retired" shall not count. The candidate shall not make any other reference to prior professional or occupational status, such as by the word "former" or "ex."

(d) The candidate shall not use the Ballot Designation to state, or imply, an endorsement or alliance. This means the designation cannot name a political party or any racial, religious or ethnic group. The candidate shall not use the Ballot Designation to state, or imply, a particular level of skill or performance. This means the designation cannot be modified by adjectives such as outstanding, leading, expert, virtuous, or eminent.

The determination of whether or not a Ballot Designation conforms to these guidelines shall be made in the sole discretion of the Election Coordinator. If a Ballot Designation does not conform, in whole or in part, it shall be reformed by the Election Coordinator with prior notice to the candidate, before it is printed on the ballots.

The Election Coordinator will provide each candidate with written criteria for choosing a Ballot Designation in conformity with these guidelines, including examples of designations that were used in prior elections. The choice of Ballot Designation must be made by each candidate, and the California Public Employees' Retirement System accepts no responsibility for the content or validity of a given Ballot Designation.

The amendments to this section adopted on March 21, 2001 shall become operative on January 16, 2002. The addition of this section filed August 24, 1998 shall remain in effect until that time.

NOTE: Authority cited: Section 20121, Government Code. Reference: Section 20096, Government Code.

HISTORY

1. New section filed 8–24–98; operative 9–23–98 (Register 98, No. 35).
2. Amendment of subsections (a) and (d) filed 11–30–2000 as an emergency; operative 11–30–2000 (Register 2000, No. 48). A Certificate of Compliance must be transmitted to OAL by 3–30–2001 or emergency language will be repealed by operation of law on the following day.
3. Change without regulatory effect correcting subsection (a) of 11–30–2000 emergency action filed 12–18–2000 pursuant to section 100, title 1, California Code of Regulations (Register 2000, No. 51).
4. Pursuant to the order of the Superior Court of California, Court of Sacramento, dated April 20, 2001, in *California State Employees Association, Local 1000, SEIU, AFL–CIO, CLC v. Public Employees Retirement System, et al.*, No. 00CS01662, the emergency amendment filed 11–30–2000 has been invalidated and is unenforceable until adopted in full compliance with the Administrative Procedure Act. Reinstatement of section as it existed prior to 11–30–2000 emergency amendment (Register 2001, No. 22).
5. Amendment of subsections (a) and (d) adopted by CalPERS Board 3–21–2001; submitted to OAL and filed 8–2–2001; operative 1–16–2002 (Register 2001, No. 31).

§ 555. Action of Executive Officer.

The Executive Officer is hereby authorized to act: on any application for refund of contributions, crediting of service, correction of records, retirement for disability or service, and death benefits and allowances; and to fix and authorize the payment of any refund, allowance or benefit to which such applicant may be found to be entitled; to cause medical examination of retired persons; and to reinstate such persons from retirement upon his determination that disability does not exist. The Executive Officer may refer the question of an applicant's entitlement to any refund, allowance or benefit or of his reinstatement from retirement to a hearing officer for hearing.

The Executive Officer is hereby authorized and empowered to delegate to his subordinates authority to take any such action on his behalf.

NOTE: Authority cited for Article 2: Section 20120, Government Code. Reference: Sections 20107 and 20133, Government Code.

HISTORY

1. New Article 2 (§§ 555 through 555.4) filed 8–10–64; effective thirtieth day thereafter (Register 64, No. 17).
2. Amendment filed 2–26–75; effective thirtieth day thereafter (Register 75, No. 9).

§ 555.1. Right of Appeal.

Any applicant dissatisfied with the action of the Executive Officer on his application, other than his referral of the matter for hearing, may appeal such action to the Board by filing a written notice of such appeal at the offices of the Board within thirty days of the date of the mailing to him by the Executive Officer, at his most recent address of record, of notice of the action and right of appeal. An appeal shall contain a statement of the facts and the law forming the basis for appeal. Upon a satisfactory showing of good cause, the Executive Officer may grant additional time not to exceed 30 days, within which to file such appeal.

HISTORY

1. Amendment filed 4–28–76; effective thirtieth day thereafter (Register 76, No. 18).

§ 555.2. Statement of Issues.

Any applicant filing an appeal shall be entitled to a hearing, and upon the filing of an appeal in accordance with these rules, or upon the Executive Officer's referral of any question for hearing, the Executive Officer shall execute a statement of issues. Such action of the Executive Officer shall not preclude the Board from recalling the proceedings for its review or hearing.

§ 555.3. Accusation.

Any member whose retirement for disability has been requested by his employer shall be entitled to a hearing. The Executive Officer, upon determination that a member shall be retired for disability on such application, shall file an accusation and serve a copy thereof on the member and his employer.

§ 555.4. Hearings.

All hearings shall be conducted in accordance with the provisions of Chapter 5, Part 1, Division 3, Title 2 of the Government Code. Each case shall be heard by the hearing officer alone. All proposed decisions of hearing officers shall be referred to the Board. The Executive Officer is hereby authorized and empowered to take, in the name and on behalf of the Board, any action which the Board is authorized or directed by law to take with respect to procedural and jurisdictional matters in connection with any case in which a statement of issues or accusation has been filed.

[The next page is 47.]

§ 556. Service Fees.

Reasonable requests for information and service with respect to a claim for benefits shall be satisfied without charge, except that there shall be a standard charge for copywork. With respect to matters other than a claim for benefits, requests for information and service shall be satisfied only upon agreement to pay to the System a fee representing cost to the System for providing such information and service.

NOTE: Authority cited: Sections 20120–20124, Government Code. Reference: Sections 20120–20124, Government Code.

HISTORY

1. New section filed 12–6–77; effective thirtieth day thereafter (Register 77, No. 50).

§ 558. Incompatible Activities Statement.

The following activities are deemed to be inconsistent, incompatible, in conflict with, or inimical to the duties of PERS officers or employees:

(1) Using the prestige or influence of the state or PERS for the officer's or employee's private gain or advantage or the private gain of another.

(2) Using state time, facilities, equipment (including but not limited to xerox machines, telephones, vehicles, postage meters, data processing or word processing equipment, or personal computers) or supplies for private gain or advantage.

(3) Using, or having access to, confidential information available by virtue of state employment (including but not limited to confidential data filed by a member or beneficiary with the board, and confidential contract, financial, investment or legal information) for private gain or advantage.

(4) Providing confidential information (including but not limited to confidential data filed by a member or beneficiary with the board, and confidential contract, financial, investment or legal information) to persons to whom issuance of this information has not been authorized.

(5) Receiving or accepting money or any other consideration (including but not limited to entertainment, lodging, travel expenses, services or other items) from anyone other than the state for the performance of his or her job duties as a state officer or employee.

(6) Performance of an act in other than his or her capacity as a state officer or employee knowing that the act may later be subject, directly or indirectly to the control, inspection, review, audit, or enforcement by the officer or employee.

(7) Receiving or accepting, directly or indirectly, any gift, including money, or any service, gratuity, favor, entertainment, hospitality, loan, or any other thing of value from anyone who is doing or is seeking to do business of any kind with the Public Employees' Retirement System or whose activities are regulated or controlled by PERS under circumstances from which it reasonably could be substantiated that the gift was intended to influence the officer or employee in his or her official duties or was intended as a reward for any official actions performed by the officer or employee.

(8) Subject to any other laws, rules, or regulations as pertains thereto, not devoting his or her full time, attention, and efforts to his or her state office or employment during his or her hours of duty as a state officer or employee.

The following activities are specifically deemed to be incompatible, inconsistent, in conflict with, or inimical to the duties of PERS officers and employees due to the nature of the responsibilities of the Public Employees' Retirement System:

(9) Accepting commercial transportation or lodging of any type, or accepting direct or indirect payment or reimbursement for lodging or transportation of any type from any person, business entity, or organization doing or seeking to do business of any kind with PERS, except where:

(A) the travel and/or accommodations or payment or reimbursement for such are provided in connection with training, or a meeting, seminar, or conference which the Executive Officer, or the Board President where the proposed attendee is the Executive Officer, has determined to be of educational value to the attendee; and

(B) the acceptance of the transportation, lodging, payment or reimbursement for such is not prohibited by any other section of this regulation or by any other provision of law.

PERS or the State of California shall pay for travel and lodging expenses of PERS officers and employees on PERS–related business whenever possible. Only if the system or the state is unable to pay the officer's or employee's travel or lodging expenses may a PERS officer or employee accept commercial transportation or lodging of any type, or reimbursement or direct or indirect payment for lodging or transportation of any type, from sources other than PERS or the State of California.

Prior to accepting commercial transportation or lodging or payment or reimbursement for lodging and/or transportation of any type from a source other than PERS or the State of California, the Assistant Executive Officers and employees shall obtain written approval from the Executive Officer, and the Executive Officer shall obtain prior written approval from the Board President.

(10) Claiming travel expenses from PERS for other than state business. No employee shall accept dual payment for travel expenses.

(11) Initiating contact with state administrators or legislative personnel for the purpose of presenting PERS' policy or position on legislation or amendments thereto or initiative or referendum petitions, unless such act is a part of the officer's or employee's official duties. This prohibition does not preclude officers or employees, as private citizens, from contacting legislative or administrative personnel.

(12) Publishing any writing or making any statement to the media which directly or indirectly refers to his or her connection with PERS unless such an act is part of the officer's or employee's official duties, or unless such writing or statement contains an appropriate disclaimer indicating that the views expressed are his or her own and do not necessarily reflect the views of PERS or the Board.

(13) PERS employees and officers shall report all gifts, gratuities and other considerations which are not prohibited by this regulation, except those which are from family members or which are clearly given in a personal or social setting. Such report shall be on PERS' gratuity reporting form, in the month the gift was received. Even gifts which have no monetary value or are of nominal value are to be reported.

(14) All gifts, gratuities and other consideration which are prohibited by the provisions of this regulation are to be returned to the sender whenever possible. The return of prohibited gifts and other consideration can be at PERS' expense, through the mail room, and can include any insurance needed.

(15) For purposes of this regulation, "outside employment" is defined as any services performed by a PERS employee or officer on his or her own time, during other than normal working hours, for which he or she receives any form of compensation.

Outside employment is deemed inconsistent, incompatible, in conflict with, or inimical to the officer's or employee's duty to PERS if it violates any of the provisions of this regulation, or any other law.

PERS officers and employees must obtain prior approval, in the manner described below, before engaging in the types of employment described in (A)–(C):

(A) Outside employment with any person, organization or business entity of any type that contracts with PERS to provide goods or services, or contracts with PERS for any other purpose.

(B) Being a partner in, or acting as an officer or board member of, or as a consultant or contractor to, or owning more than a five percent ownership interest in any business, institution, or any agency which he/she knows has financial dealings with PERS.

(C) Any employment, the nature of which is parallel to or closely allied with the services provided to PERS by the officer or employee, including but not limited to, attorneys performing outside legal work, investment officers providing outside investment services, or actuaries providing outside actuarial services.

A PERS officer or employee who wishes to engage in outside employment or an activity which meets the criteria set forth above in subsection

(C), must first make a written request for and receive a written determination that such outside employment or activity is not inconsistent, incompatible, or in conflict with the officer's or employee's duty to PERS. An employee will obtain this determination from his or her Division Chief or function head. Division Chiefs or function heads, and Assistant Executive Officers, will obtain this determination from the PERS Executive Officer.

The PERS Executive Officer shall not engage in such outside employment which meets the criteria set forth above in subsection (C), unless he or she has obtained prior approval from the Board by way of formal Board action.

An officer or employee who is engaged in outside employment on the effective date of this regulation may continue such employment while the request for determination is being processed.

This regulation does not attempt to specify every possible limitation on officer or employee activities that might be determined incompatible under Government Code section 19990.

Nothing in this regulation shall exempt any person from applicable provisions of any other laws of this state. The standards of conduct set forth in this regulation are in addition to those prescribed in PERS' Conflict of Interest Code.

If a PERS officer or employee violates any provision of this regulation, he or she will be liable for disciplinary action to include possible dismissal or removal from office.

If a PERS officer or employee is notified that he or she has violated any provision of this regulation, or that a category of outside employment is prohibited, the officer or employee may appeal through PERS' personnel complaint procedure.

NOTE: Authority cited: Section 20120, Government Code. Reference: Section 19990, Government Code.

HISTORY

1. New section filed 1–17–89; operative 2–16–89 (Register 89, No. 11).

Article 3. Public Employees' Retirement System— Conflict of Interest Code

§ 560. General Provisions.

The Political Reform Act found at Government Code sections 81000, et seq., requires state and local government agencies to adopt and promulgate a Conflict of Interest Code. The purpose of this conflict of interest code is to facilitate the disclosure of the economic interests of public officials serving the California Public Employees' Retirement System ("CalPERS") that may be materially affected by CalPERS actions in which they participate.

Designated employees, consultants, board members and candidates shall file statements of economic interests with CalPERS' filing officer. With respect to certain employees and officials such as board members who are determined to manage public investments, within the meaning of Government Code section 87200, CalPERS shall make and retain a copy and forward the original of these statements to the Fair Political Practices Commission. While public officials who manage investments are not required to be listed in this code, those officials are listed at the end of this document for clarity. Unlike the designated employees, these officials' reporting obligations are not limited by reference to a reporting category.

This provision incorporates by reference 2 California Code of Regulations, Section 18730 and any amendments to it duly adopted by the Fair Political Practices Commission. Those regulations along with the attached appendix in which officials and employees are designated and disclosure categories are set forth, constitute the CalPERS Conflict of Interest Code.

CONFLICT OF INTEREST CODE FOR THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM

Appendix

Assigned Disclosure Designated Positions	*Category*
ACTUARIAL & EMPLOYER SERVICES DIVISION	
Chief Actuary	1
Division Chief	1
Assistant Division Chief	1
Associate Pension Actuary	1
Senior Pension Actuary	1
Staff Services Manager (Special Projects)	1
Staff Services Manager II (Supervisor)	1
Supervising Pension Actuary	1
BENEFIT SERVICES DIVISION	
Division Chief	1
Staff Services Manager III	1
COMET — PENSION SYSTEM RESUMPTION PROJECT	
Division Chief	1
CUSTOMER CONTACT CALL CENTER	
Division Chief	1
DIVERSITY OUTREACH PROGRAM	
Diversity Program Coordinator	1
EXECUTIVE OFFICE	
Assistant Executive Officer (All)	1
CEA, Special Asst to Board President	1
FISCAL SERVICES DIVISION	
Division Chief	1
Accounting Administrator I (Specialist)(Supervisor)	1
Accounting Administrator II	1
Accounting Administrator III	1
Staff Administrative Analyst (General)	1
Staff Services Manager I	1
Staff Services Manager II (Supervisor)	1
HUMAN RESOURCES DIVISION	
Division Chief	1
Labor Relations Manager	1
Staff Services Manager II (Managerial)	1
Staff Services Manager III	1
INNOVATION SERVICES DIVISION	
Division Chief	1
Data Processing Manager II	3
Data Processing Manager III	3
Senior Information System Analyst (Supervising)	3
INVESTMENT OFFICE	
Division Chief	1
Assistant Investment Officer	1
Associate Administrative Analyst	1
Associate Governmental Program Analyst	1
Investment Officer (All levels)	1
Mortgage Investment Specialist I	1
Mortgage Investment Specialist II	1
Principal Investment Officer	1
Retirement Program Specialist (All)	1
Staff Services Analyst (General)	1
Staff Services Manager I	1
Staff Services Manager II	1
LEGAL OFFICE	
Deputy General Counsel	1
Assistant Chief Counsel	1
Staff Counsel	1
Staff Counsel III (All Classes)	1
Staff Counsel IV	1
MEMBER SERVICES DIVISION	
Division Chief	1
Staff Services Manager II (Supervisor)	1
Staff Services Manager III	1
OFFICE OF AUDIT SERVICES	
Division Chief	1
Associate Program Evaluator	1
Program Evaluator Specialist	1
Program Evaluator	1
Senior Program Evaluator Specialist	1
Senior Program Evaluator	1
Staff Program Evaluator	1
Staff Program Evaluator Specialist	1

Assigned Disclosure Designated Positions	*Category*
OFFICE OF DECISION AND PROGRAM SUPPORT SERVICES	
Division Chief	1
Associate Governmental Program Analyst	2
Health Program Manager II	2
Health Program Manager III	2
Research Analyst II	2
Research Program Specialist I	2
Research Program Specialist II	2
Retirement Program Specialist II — Tech	2
Staff Services Manager (All)	2
OFFICE OF ENTERPRISE COMPLIANCE	
Chief Compliance Officer	1
Investment Officer I	1
OFFICE OF EMPLOYER & MEMBER HEALTH SERVICES	
Division Chief	1
Retirement Program Specialist II (Tech)	2
Retirement Program Specialist II (Supervising)	2
Staff Services Manager I	2
Staff Services Manager II (Supervising)	2
Staff Services Manager III	2
OFFICE OF GOVERNMENTAL AFFAIRS	
Division Chief	1
OFFICE OF HEALTH POLICY & PLAN ADMINISTRATION	
Division Chief	1
Administrator of Benefit Programs	1
Associate Governmental Program Analyst	2
Associate Pension Actuary	1
Health Program Manager III	1
Nurse Consultant	2
Research Analyst II	2
Retirement Program Specialist II — Tech	2
Staff Services Analyst	2
Staff Services Manager I	2
Staff Services Manager II	2
OFFICE OF INFORMATION SECURITY	
Data Processing Manager III	1
OFFICE OF POLICY AND PROGRAM DEVELOPMENT	
Division Chief	1
Staff Services Manager I	1
OPERATIONS SUPPORT SERVICES DIVISION	
Division Chief	1
Staff Services Manager I	1
Staff Services Manager II (Supervisor)	1
PUBLIC AFFAIRS OFFICE	
Division Chief	1
Staff Services Manager II	1
R STREET PROJECT	
Division Chief	1
Staff Services Manager III	1
STRATEGIC MANAGEMENT SERVICES DIVISION	
Division Chief	1
Data Processing Manager III	3
Senior Information System Analyst (Supervising)	3
TECHNOLOGY SERVICES AND SUPPORT DIVISION	
Division Chief	1
Data Processing Manager II	3
Data Processing Manager III	3
Data Processing Manager IV	3
System Software Specialist III (All Classes)	3
CONTRACTS FOR SERVICES	
Consultants Who Do Not Manage Public Investments*	1

* Notwithstanding the designation of consultants who do not manage public investments as category 1 filers, the General Counsel may determine in writing that a particular consultant is hired to perform a range of duties such that category 1 is not appropriate. In those cases, the General Counsel may designate any other reporting category including any category not included in this Conflict of Interest Code. Such a determination by the General Counsel must be in writing and shall include a description of the consultant's duties and the consultant's disclosure category. The General Counsel's determination is a public record and shall be retained for public inspection in the same manner and location as this Conflict of Interest Code.

DISCLOSURE CATEGORIES — *Category 1*

Designated individuals in Category 1 must report:

All investments and business positions in business entities, and income (including gifts, loans, and travel payments) from sources which are of the type (1) to contract with CalPERS, or (2) in which funds administered by the Board may be invested (including securities, real estate and business entities).

All interest in real estate co–owned with, or purchased from, the above.

Category 2

Designated individuals in Category 2 must report:

All investments and business positions in business entities, and income (including gifts, loans, and travel payments) from sources which are of the type to contract with CalPERS to provide health care services.

Category 3

Designated individuals in Category 3 must report:

All investments and business positions in business entities, and income (including gifts, loans, and travel payments) from sources which are of the type to sell, rent or lease information technology equipment, hardware, software, facilities, supplies or services to CalPERS.

OFFICIALS WHO MANAGE PUBLIC INVESTMENTS

It has been determined that individuals in the positions listed below are officials who manage public investments, within the meaning of Government Code section 87200, and will file the Form 700 Statement of Economic Interests:

Board Members
Chief Executive Officer
Deputy Executive Officer
General Counsel
Chief Investment Officer
Assistant Executive Officer — Investment Operations
Senior Investment Officer (all classes)
Senior Portfolio Manager (all classes)
Investment Manager, Asset Allocation/Risk Management
Portfolio Manager (all classes)
Consultants Who Manage Public Investments

NOTE: Authority cited: Article XVI, section 17, California Constitution; Sections 87200 et seq., 87300 and 87304, Government Code. Reference: Sections 87200 et seq. and 87300 et seq., Government Code.

HISTORY

1. New article 3 (sections 560–560.9) filed 3–31–78; effective thirtieth day thereafter. Approved by Fair Political Practices Commission 2–9–78 (Register 78, No.13). For history of former article 3 (section 560), see Register 64, No.24.
2. Amendment of article 3 (sections 560–560.9) filed 9–26–79; effective thirtieth day thereafter. Approved by Fair Political Practices Commission 8–8–79 (Register 79, No.39).
3. Repealer of article 3 (sections 506–560.9) and new article 3 (section 560 and Appendix) filed 2–26–81; effective thirtieth day thereafter. Approved by Fair Political Practices Commission 12–1–80 (Register 81, No.9).
4. Amendment filed 5–11–90; operative 6–10–90. Approved by Fair Political Practices Commission 3–30–90 (Register 90, No. 25).
5. Amendment of second paragraph and Appendix filed 2–10–95; operative 2–10–95. Submitted to OAL for printing only pursuant to Government Code section 11346.2 (Register 95, No. 6).
6. Amendment of section and Appendix filed 5–9–2000; operative 6–8–2000. Approved by Fair Political Practices Commission 3–10–2000 (Register 2000, No. 19).
7. Repealer and new section and Appendix filed 1–17–2006; operative 2–16–2006. Approved by Fair Political Practices Commission 11–7–2005 (Register 2006, No. 3).

Article 3.5. Member Home Loan Program

§ 561. Scope and Authority.

These regulations interpret and implement the Currently Employed Member and Annuitant Single Family Home Loan Program authorized by Section 20200 of the Government Code. The regulations establish criteria and procedures for eligibility determination, loan origination, terms, servicing and termination.

NOTE: Authority cited: Sections 20120 and 20200, Government Code. Reference: Section 20200, Government Code.

HISTORY

1. New Article 3.5 (Sections 561–561.14) filed 5–18–81; effective thirtieth day thereafter (Register 81, No. 21).
2. Amendment of section and NOTE filed 11–18–2004; operative 12–18–2004 (Register 2004, No. 47).

§ 561.1. Program Criteria.

Loans issued pursuant to these regulations shall provide the greatest benefit to currently employed members and annuitants consistent with the Board's role as fiduciary for all members and annuitants, the sound investment of the retirement fund, and the financial integrity of the program.

NOTE: Authority cited: Sections 20120 and 20200, Government Code. Reference: Section 20200, Government Code.

HISTORY

1. Amendment of NOTE filed 11–18–2004; operative 12–18–2004 (Register 2004, No. 47).

§ 561.2. Definitions.

"Annuitant" means a person who receives an allowance from the System.

"Board" means Board of Administration of the System.

"Correspondent" means a lending institution which meets the System's minimum standards for appointment for mortgage loan correspondents, which may be changed from time to time, and such lending institution has entered into a correspondent's agreement with the System which is still valid at the time of origination of the loan.

"Currently employed member" means a person who is in active state or local public agency service as defined in Section 20069 of the Government Code and contributing to the System on account of such service on the date of the application for the loan and on the date of the purchase of the loan by the System.

"Home" means a single–family dwelling, two–family dwelling, three–family dwelling, four–family dwelling, single–family cooperative apartment, and single–family condominium within the state which the borrower intends to make his or her permanent and principal residence. "Home" does not include duplexes or other multi–unit equity interests or living units forming a part of any commercial activity.

"Loan" means a loan secured by a first note and deed of trust on a home to a borrower pursuant to the provisions of these regulations.

"Officers" means members of the Board of Administration of the California Public Employees' Retirement System, and its designees.

"Principal residence" means the home that the borrower intends to occupy as permanent and principal residence for the term of the loan. It does not include a purchase for speculative, temporary, interim, or second home purposes.

"System" means the Public Employees' Retirement System, an agency of the State of California.

NOTE: Authority cited: Sections 20120, 20121, 20200 and 20201, Government Code. Reference: Sections 20002, 20021, 20200 and 20201, Government Code.

HISTORY

1. Amendment adding new definition of "Officers" and amendment of NOTE filed 6–20–2002; operative 7–20–2002 (Register 2002, No. 25).
2. Amendment of definitions of "Correspondent," "Currently employed member" and "Home" filed 11–18–2004; operative 12–18–2004 (Register 2004, No. 47).

§ 561.3. Eligibility for Loans.

At the time of origination, loans shall be available only to qualified currently employed members and annuitants for the purchase of homes in accordance with the provisions of these regulations.

A member or annuitant shall not be eligible for a second loan under this program while a loan which he originated remains outstanding.

Effective January 1, 2002, "officers" as defined herein (Sec. 561.2) shall not be eligible for a home loan under the Member Home Loan Program.

NOTE: Authority cited: Sections 20120, 20121, 20200 and 20201, Government Code. Reference: Sections 20002, 20021, 20200 and 20201, Government Code.

HISTORY

1. Amendment filed 10–29–92; operative 11–30–92 (Register 92, No. 44).
2. Amendment adding third paragraph and amendment of NOTE filed 6–20–2002; operative 7–20–2002 (Register 2002, No. 25).

§ 561.4. Loan Standards.

To the extent that they are not in conflict with the provisions of these regulations, loan standards shall be as defined in the Board's "Minimum Standards of Acceptability for Conventional Single–Family Real Estate Mortgage Loans and FHA–VA Loans" as they exist on the effective date of these regulations, and as they may be formally changed from time to time.

NOTE: Authority cited: Sections 20120 and 20200, Government Code. Reference: Section 20200, Government Code.

HISTORY

1. Amendment of NOTE filed 11–18–2004; operative 12–18–2004 (Register 2004, No. 47).

§ 561.5. Rates.

Loans shall carry interest rates which shall be set in advance, from time to time, by the Board's Investment Committee.

NOTE: Authority cited: Sections 20120 and 20200, Government Code. Reference: Section 20200, Government Code.

HISTORY

1. Amendment of NOTE filed 11–18–2004; operative 12–18–2004 (Register 2004, No. 47).

§ 561.6. Proof of Occupancy.

Borrowers shall certify in their loan application that they intend to occupy the home as their principal residence. Borrowers shall notify the correspondent servicing the loan immediately when they cease to occupy the home as their principal residence.

NOTE: Authority cited: Sections 20120 and 20200, Government Code. Reference: Section 20200, Government Code.

HISTORY

1. Amendment of NOTE filed 11–18–2004; operative 12–18–2004 (Register 2004, No. 47).

§ 561.7. Failure to Comply with Certification and Notice Requirement.

Failure to comply with the provisions of Section 561.6 within ten days may cause the outstanding balance of the loan to become immediately due and payable.

NOTE: Authority cited: Sections 20120 and 20200, Government Code. Reference: Section 20200, Government Code.

HISTORY

1. Amendment of NOTE filed 11–18–2004; operative 12–18–2004 (Register 2004, No. 47).

§ 561.8. Amount of Loan and Mortgage Insurance.

At the time the loan is originated, the amount of the loan shall provide a loan to value ratio of a maximum of 100 percent for the first loan for a single–family dwelling, single–family cooperative apartment, or single–family condominium; 95 percent for the first loan on a two–family dwelling; and 90 percent for the first loan on a three–family dwelling or four–family dwelling. The portion of any loan exceeding 80 percent of value shall be insured by an admitted mortgage guaranty insurer conforming to the provisions of Chapter 2A (commencing with Section 12640.01) of Part 6 of Division 2 of the Insurance Code in an amount so that the unguaranteed portion of the loan does not exceed 75 percent of the market value of the property together with improvements thereon.

NOTE: Authority cited: Sections 20120 and 20200, Government Code. Reference: Section 20200, Government Code.

HISTORY

1. Amendment of section and NOTE filed 11–18–2004; operative 12–18–2004 (Register 2004, No. 47).

§ 561.9. Term of Loan.

The maximum term for any loan shall be 360 months.

NOTE: Authority cited: Sections 20120 and 20200, Government Code. Reference: Section 20200, Government Code.

HISTORY

1. Editorial correction of Reference cite (Register 95, No. 5).
2. Amendment of NOTE filed 11–18–2004; operative 12–18–2004 (Register 2004, No. 47).

§ 561.10. Prepayment Penalties.

Loans shall be subject to the prepayment penalties in effect as of the date the loan is closed as set forth in the Board's real estate mortgage loan standards which may be formally changed from time to time.

NOTE: Authority cited: Sections 20120 and 20200, Government Code. Reference: Section 20200, Government Code.

HISTORY

1. Amendment of NOTE filed 11-18-2004; operative 12-18-2004 (Register 2004, No. 47).

§ 561.11. Origination and Servicing of Loans.

Subject to the Housing Financial Discrimination Act of 1977 and other applicable law, correspondents, when approved by the System, shall originate and service loans pursuant to the standard correspondent's agreement and the Board's "Instructions to Correspondents for the Sale and Servicing of Conventional Single Family and FHA and VA Loans Purchased by the California Public Employees' Retirement System" as it may be formally changed from time to time.

NOTE: Authority cited: Sections 20120 and 20200, Government Code. Reference: Section 20200, Government Code.

HISTORY

1. Amendment of NOTE filed 11-18-2004; operative 12-18-2004 (Register 2004, No. 47).

§ 561.12. Commitments.

The Board shall not be obligated to purchase a loan from an originating correspondent unless all of the requirements for such purchase have been met and the Board has executed a commitment to purchase such loan.

NOTE: Authority cited: Sections 20120 and 20200, Government Code. Reference: Section 20200, Government Code.

HISTORY

1. Amendment of NOTE filed 11-18-2004; operative 12-18-2004 (Register 2004, No. 47).

§ 561.13. Purchase Price.

With respect to all loans for which the Board has executed a commitment, the purchase price shall not exceed that amount set forth in the System's commitment.

NOTE: Authority cited: Sections 20120 and 20200, Government Code. Reference: Section 20200, Government Code.

HISTORY

1. Amendment of NOTE filed 11-18-2004; operative 12-18-2004 (Register 2004, No. 47).

§ 561.14. Administration of the Program.

The Board, pursuant to Section 20099 of the Government Code, hereby delegates to the Executive Officer the administration of the program to act finally in accordance with these regulations and the instructions and supervision of the Board's Investment Committee. The Executive Officer may, in turn, delegate to subordinates the ministerial functions of the program.

NOTE: Authority cited: Sections 20120 and 20200, Government Code. Reference: Sections 20099 and 20200, Government Code.

HISTORY

1. Amendment of section and NOTE filed 11-18-2004; operative 12-18-2004 (Register 2004, No. 47).

Article 4. Contracts

§ 565. Payment of Contributions.

Member and employer contributions shall be received in the System's Sacramento office on or before 15 calendar days following the last day of the pay period to which they refer.

NOTE: Authority cited: Sections 20120-20124, Government Code. Reference: Sections 20531 and 20531.5, Government Code.

[The next page is 51.]

HISTORY
1. New section filed 4–30–76; designated effective 7–1–76 (Register 76, No. 18).
2. Amendment filed 8–7–86; effective thirtieth day thereafter (Register 86, No. 32).

§ 565.1. Filing of Payroll Report.

(a) For employers reporting on tape or punched cards, a complete and orderly payroll report for each pay period shall be filed with the System at its Sacramento office on or before 30 calendar days following the last day of the period to which it refers.

(b) For employers reporting on a pre–list method, a complete and orderly payroll report for each pay period shall be filed with the System at its Sacramento office on or before 30 calendar days following the last day of the period to which it refers, or on or before 20 calendar days after mailing, by the System, of the pre–list therefor, whichever is the later.

NOTE: Authority cited: Sections 20120–20124, Government Code. Reference: Sections 20531 and 20531.5, Government Code.

HISTORY
1. New section filed 4–30–76; designated effective 7–1–76 (Register 76, No. 18).

§ 565.2. Interest on Late Payments.

(a) If an employer fails to pay 90% of the contributions due within the prescribed time set forth in Section 565, interest shall be charged upon the amount due from the due date until received by the System in Sacramento.

(b) The annual rate of interest to be charged shall be equal to the average yield on moneys being invested in short–term fixed income securities during the month which includes the due date.

NOTE: Authority cited: Sections 20120–20124, Government Code. Reference: Sections 20531 and 20531.5, Government Code.

HISTORY
1. New section filed 4–30–76; designated effective 7–1–76 (Register 76, No. 18).
2. Amendment filed 8–7–86; effective thirtieth day thereafter (Register 86, No. 32).

§ 565.3. Cost Assessment for Late Reporting.

(a) If an employer fails to file a payroll report as required by these regulations within the time period set forth, an assessment to recover the cost of follow–up and special accounting of $200.00 for each report shall be made.

(b) If, in the opinion of the Executive Officer, such assessment is insufficient to meet the added costs because of special circumstances, he shall estimate such costs and make an appropriate supplemental assessment.

NOTE: Authority cited: Sections 20120–20124, Government Code. Reference: Sections 20531 and 20531.5, Government Code.

HISTORY
1. New section filed 4–30–76; designated effective 7–1–76 (Register 76, No. 18).
2. Amendment filed 8–7–86; effective thirtieth day thereafter (Register 86, No. 32).

§ 565.4. Time Extension.

(a) A reasonable extension of time for filing payroll reports and payment of contributions may be granted by the Executive Officer, or the alternates whom he may designate, whenever in his judgment good cause exists.

(b) This extension, at the discretion of the Executive Officer or his designated alternate, may be granted for one specific report or blanket authority over a specific time span.

(c) Requests for time extensions must be received in the Sacramento office of the System not later than 10 days prior to the due date of the reports and contributions for which the extension is being requested.

(d) Waiver of Assessments. The Executive Officer, or his designated alternate, is empowered to waive assessments of interest or penalties if in his judgment reports of member and employer contributions and payment of such contributions become delinquent as a result of conditions beyond control of the employer.

(e) Audit Discrepancies. Contributions determined to be payable as a result of audits performed by the System are not subject to this Article.

NOTE: Authority cited: Sections 20120–20124, Government Code. Reference: Sections 20531 and 20531.5, Government Code.

HISTORY
1. New section filed 4–30–76; designated effective 7–1–76 (Register 76, No. 18).

§ 566. Contract Amendments.

A contract amendment, or that portion thereof which requires an adjustment in the amount of monthly benefit payments which were paid or payable prior to such contract amendment, shall become operative on the first day of the month next following a period of 30 days after receipt of final documentation of the adoption of such amendment by the Board, in its Sacramento office.

NOTE: Authority cited: Section 20120, Government Code. Reference: Sections 20450, et seq., Government Code.

HISTORY
1. New section filed 5–8–79; effective thirtieth day thereafter (Register 79, No. 19).

§ 566.1. Employer–Paid Member Contributions (EPMC) Conversions.

(a) A contracting agency or school employer may report the value of all or part of the normal contributions required to be paid by a member, for an individual or "group or class" of employees.

A contracting agency may also, by contract amendment(s), convert Employer–Paid Member Contributions (EPMC) to compensation earnable for a group or class of employees, only during the period of final compensation. A school employer may also, by contract amendment(s), convert EPMC to compensation earnable if all districts under the County Office of Education pass Resolutions for same.

Either provision: (1) reporting the value of EPMC as compensation; or (2) converting EPMC to compensation earnable, can only be provided to an individual if the most closely related group also has the same EPMC provision.

The contract amendment(s) to convert, must conform with the following standards as well as other applicable provisions of law:

(1) The period of final compensation must be the 12 months or 36 months immediately preceding the effective date of retirement.

(2) The provision must be fully funded for the group or class of employees, based on PERS' actuarial assumptions with the right of review set forth in subsection (b).

(3) The provision must conform to federal Internal Revenue Code standards for "qualified plan status" of the System in Section 401(a), including "non–discrimination testing".

(4) The provision must be contained in applicable current written labor agreements as well as in adopted resolutions.

(5) The conversion of EPMC to compensation earnable is an increase in payrate for all purposes.

(6) If an employee does not provide 12 months or 36 months notice of retirement, the employer shall make necessary corrections to the payrate and report adjustments to PERS.

(7) If an employee cancels his/her retirement date, this provision shall be applied to his/her new final compensation period.

(b) A contracting agency, school employer or recognized employee organization may request a review by PERS of the additional employer contributions required to fund the contract amendment provision to convert EPMC described in subsection (a). The request must comply with the following procedures:

(1) PERS will provide written notice of the rate increase to the employer by certified mail. The employer will send a copy of PERS' written notice within ten days of its receipt to all affected employee organizations, by certified mail.

(2) The request must be submitted in writing to PERS within 30 days of the date of certified receipt of the rate increase. The request should be addressed and submitted to the Actuarial Office, Public Employees' Retirement System, P.O. Box 942709, Sacramento, California, 94229–2709.

(3) A request made by an employer must be accompanied by an ordinance or resolution adopted by the governing body stating the rationale and factual basis and a copy of the receipt of certified mail and proof of service that a written notice of the rate change was sent to specified em-

ployee organization(s). A request made by an employee group must be accompanied by a signed statement of an officer of the employee organization who is authorized to contractually bind the organization, setting forth the rationale and factual basis.

(4) The request must contain actuarial evidence, prepared by a certified actuary independent of PERS, sufficient to demonstrate why a different rate may be justified to fund the contract amendment. All economic and non-economic assumptions relied upon by the independent actuary must be submitted to PERS along with the request.

PERS will acknowledge the request in writing within 15 calendar days of its receipt. PERS will issue a substantive determination to grant or deny the request for a different rate within 45 days from the date of acknowledgement. PERS will specify the reason(s) for its grant or denial, and will give the requestor a copy of all actuarial evidence and any other factual data relied upon in making its determination.

(c) An employer or recognized employee organization directly affected by the PERS determination may petition the Board of Administration to adopt a different rate for fully funding the conversion of EPMC during final compensation, based on the administrative record established during the review. The Board will not conduct an administrative hearing in accordance with the Administrative Procedure Act, but will respond to the petition in open session at one of its regularly scheduled meetings.

Both the petitioner and PERS may submit a written statement to the Board in support of its position in advance of the meeting. This statement must not be longer than three pages, single spaced. It must be received by the Executive Office, Public Employees' Retirement System, P.O. Box 942701, Sacramento, CA 94229-2701, at least 15 days prior to the scheduled meeting.

NOTE: Authority cited: Sections 20120, 20615, 20615.5(g) and 21760, Government Code. Reference: Sections 11500, 20010, 20011, 20011.1, 20023(c), 20615 and 20615.5, Government Code; Calif. Const. Art. XVI, Section 17(e).

RESEARCH NOTE: See Internal Revenue Code Sections 401 and 415; *Oden v. Public Employees' Retirement System* (1994) 23 Cal.App.4th 194 [28 Cal.Rptr. 388]; *City of Sacramento v. Public Employees' Retirement System* (1991) 229 Cal.App.3d 1470 [280 Cal.Rptr. 847].

HISTORY

1. New section filed 7-5-94 as an emergency; operative 7-5-94 (Register 94, No. 27). A Certificate of Compliance must be transmitted to OAL by 11-2-94 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 7-5-94 order transmitted to OAL 10-28-94; disapproved by OAL and order of repeal as to 7-5-94 order filed on 12-14-94 (Register 94, No. 50).
3. New section refiled 12-15-94 as an emergency, with amendments; operative 12-15-94 (Register 94, No. 50). A Certificate of Compliance must be transmitted to OAL by 4-14-95 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 12-15-94 order including amendments transmitted to OAL 4-11-95 and filed 5-23-95 (Register 95, No. 21).

§ 569. Employer Paid Member Contributions.

A contracting agency or school employer that pays all or a portion of normal member contributions based on compensation earnable, as Employer Paid Member Contributions (EPMC), must conform to the "group or class" requirements in Section 20691 of the Government Code and these regulations.

(a) Specifically, the payment of EPMC must be:

(1) Authorized in a written labor agreement;

(2) Based on earnings for normally-required duties;

(3) Based on earnings for normal hours of employment;

(4) Paid periodically, along with the earnings on which it is based;

(5) Based on earnings that are historically consistent; and

(6) Not final settlement pay.

However, the employer may qualify its payment of EPMC, by electing a cumulative "time-in-grade exception" which shall only apply to persons newly-hired into the pertinent group or class of employment.

(b) To be classified as "newly-hired," a member of the group or class must not have been previously hired or retained by the employer in any capacity whatsoever.

(c) To elect the time-in-grade exception, the employer's governing body must adopt an enabling resolution or ordinance in which it agrees to abide by the standards in this Section 569. The exception cannot take effect until after the resolution or ordinance has been reviewed and approved by CalPERS.

(d) The time-in-grade exception may be incremental, but it cannot exceed a total of five (5) years. For example, the employer may set a three-year threshold for paying fifty percent (50%), which increases by paying twenty-five percent (25%) each year, for up to two additional years of time-in-grade.

(e) Once a newly-hired employee has satisfied the time-in-grade exception, he or she shall be entitled to payment of EPMC on the same terms that apply to all other employees in the pertinent group or class.

The exception from paying EPMC pursuant to this Section 569 is separate and apart from the exception from paying and reporting the value of EPMC as an item of special compensation pursuant to Section 571(a). Both of these exceptions are separate and apart from, or do they apply to, the process for converting EPMC to payrate during the period of final compensation pursuant to Section 20692 of the Government Code.

NOTE: Authority cited: Sections 20636(e) and 20121, Government Code. Reference: Section 20691, Government Code.

HISTORY

1. New section filed 9-22-99; operative 10-22-99 (Register 99, No. 39).

§ 570. Final Settlement Pay.

"Final settlement pay" means any pay or cash conversions of employee benefits in excess of compensation earnable, that are granted or awarded to a member in connection with or in anticipation of a separation from employment. Final settlement pay is excluded from payroll reporting to PERS, in either payrate or compensation earnable.

For example, final settlement pay may consist of severance pay or so-called "golden parachutes". It may be based on accruals over a period of prior service. It is generally, but not always, paid during the period of final compensation. It may be paid in either lump-sum, or periodic payments.

Final settlement pay may take the form of any item of special compensation not listed in Section 571. It may also take the form of a bonus, retroactive adjustment to payrate, conversion of special compensation to payrate, or any other method of payroll reported to PERS.

NOTE: Authority cited: Sections 20023, 20023(f) and 20120, Government Code; Calif. Const. Art. XVI, Section 17. Reference: Section 20023, Government Code.

RESEARCH NOTE: *Oden v. Public Employees' Retirement System* (1994) 23 Cal.App.4th 194 [28 Cal.Rptr.2d 388]; *City of Sacramento v. Public Employees' Retirement System* (1991) 229 Cal.App.3d 1470 [280 Cal.Rptr. 847]; *Santa Monica P.O.A. v. Bd of Admin. Public Employees' Retirement System* (1978) 69 Cal.App.3d 96 [137 Cal.Rptr. 771].

HISTORY

1. New section filed 7-5-94 as an emergency; operative 7-5-94 (Register 94, No. 27). A Certificate of Compliance must be transmitted to OAL by 11-2-94 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance, including amendment of section, as to 7-5-94 order transmitted to OAL 10-28-94 and filed 12-14-94 (Register 94, No. 50).

§ 571. Definition of Special Compensation.

(a) The following list exclusively identifies and defines special compensation items for members employed by contracting agency and school employers that must be reported to CalPERS if they are contained in a written labor policy or agreement:

(1) INCENTIVE PAY

Bonus – Compensation to employees for superior performance such as "annual performance bonus" and "merit pay". If provided only during a member's final compensation period, it shall be excluded from final compensation as "final settlement" pay. A program or system must be in place to plan and identify performance goals and objectives.

Dictation/Shorthand/Typing Premium – Compensation to clerical employees for shorthand, dictation or typing at a specified speed.

Longevity Pay – Additional compensation to employees who have been with an employer, or in a specified job classification, for a certain minimum period of time exceeding five years.

Management Incentive Pay – Compensation granted to management employees in the form of additional time off or extra pay due to the unique nature of their job. Employees within the group cannot have the option to take time off or receive extra pay. This compensation must be reported periodically as earned and must be for duties performed during normal work hours. This compensation cannot be for overtime, nor in lieu of other benefits excluded under the statutes, nor for special compensation not otherwise listed in this Section 571.

Marksmanship Pay – Compensation to local police officers, county peace officers and school police or security officers who meet an established criterion such as "certification" as a marksperson.

Master Police Officer – Compensation to local police officers, county peace officers and school police or security officers who meet specified requirements, years of employment, performance standards, education, Peace Officer Standard Training (POST), and perform a specialty assignment.

Physical Fitness Program – Compensation to local safety members and school security officers who meet an established physical fitness criterion.

Value of Employer–Paid Member Contributions (EPMC) – The full monetary value of employer–paid member contributions (EPMC) paid to CalPERS and reported as an item of special compensation on behalf of all members in a group or class.

The value of EPMC is calculated on all "compensation earnable" excluding the special compensation of the monetary value of EPMC paid to CalPERS by the employer under Government Code section 20636(c)(4), thus eliminating a perpetual calculation.

(A) A resolution or ordinance of the governing body must be provided to CalPERS indicating the group or class, effective date, and the percent or amount of EPMC being paid and reported as an item of special compensation. The resolution or ordinance must be formally adopted by the employer's governing body, and submitted to CalPERS for review and approval.

(B) The resolution or ordinance must specify that the value of EPMC will be reported as an item of special compensation consistently, for all members in the affected group or class of employment — except that the employer's governing body may elect a "time–in–grade exception" which shall only apply to persons newly–hired into the pertinent group or class of employment.

(C) To be classified as "newly–hired," a member of the group or class must not have been previously hired or retained by the employer in any capacity whatsoever.

(D) The time–in–grade exception must be elected in the same resolution or ordinance, or by amendment thereto, as adopted by the employer's governing body for the purpose of paying and reporting the value of EPMC, pursuant to this Section 571. The exception can only be used for the value of EPMC, and not for any other item of special compensation.

1. The time–in–grade exception must be applied consistently to all newly–hired employees in the pertinent group or class.

2. The time–in–grade requirement may be incremental, not to exceed a total of five (5) years. For example, the initial requirement may be three years for paying fifty percent (50%) with increases of twenty–five percent (25%) for each additional year of time–in–grade.

3. Once the initial time–in–grade requirement has been met by a newly–hired employee, the employer shall begin paying and reporting the value of EPMC for him or her to the same extent as for all others in the pertinent group or class.

(E) To implement the time–in–grade exception, the employer's governing body must acknowledge that it may experience an upward adjustment to its employer contribution rate. The acknowledgment must be included in the resolution or ordinance by which the employer's governing body elected to pay and report EPMC as an item of special compensation, by adoption or amendment thereto.

(F) The full terms of the resolution or ordinance by which the employer's governing body elects to pay and report the value of EPMC as an item of special compensation — along with any time–in–grade exception for newly–hired employees — must be incorporated into the written labor agreement that pertains to the affected group or class of employment.

The time–in–grade exception from paying and reporting the value of EPMC as an item of special compensation pursuant to this Section 571, is separate and apart from the time–in–grade exception from paying EPMC pursuant to Section 569 of these regulations. Both of these exceptions are separate and apart from, nor do they apply to, the process for converting EPMC to payrate during the period of final compensation, pursuant to Section 20692 of the Government Code.

Off–Salary–Schedule Pay – Compensation in addition to base salary paid in similar lump–sum amounts to a group or class of employees. These payments are routinely negotiated through collective bargaining in lieu of increases to the salary schedule. These payments are based on a similar percent of scheduled salary not to exceed six percent (6%) per fiscal year. The contracting agency or school employer may adopt similar action for non–represented groups or classes of employment as were negotiated through collective bargaining.

(2) EDUCATIONAL PAY

The items of special compensation outlined below do not include reimbursement to an employee for the cost of an application or test, books, tuition or travel.

Applicator's Differential – Compensation to employees who are required to maintain a Qualified Pesticide Applicator's Certificate.

Certified Public Accountant Incentive – Compensation to miscellaneous employees passing an exam and receiving a license as a Certified Public Accountant.

Educational Incentive – Compensation to employees for completing educational courses, certificates and degrees which enhance their ability to do their job. A program or system must be in place to evaluate and approve acceptable courses. The cost of education that is required for the employee's current job classification is not included in this item of special compensation.

Emergency Medical Technician Pay – Compensation to safety employees who obtain and maintain an emergency medical technical (EMT) certification.

Engineering Registration Premium – Compensation to engineers who have taken and passed a California engineering proficiency exam and are registered with the State of California.

Government Agency Required Licenses – Compensation to employees receiving and maintaining a license required by government or regulatory agencies to perform their duties.

International Conference of Building Officials (ICBO) Certificate – Compensation to building inspectors who obtain and maintain an International Conference of Building Officials (ICBO) certificate in one or more certified areas.

Mechanical Premium (Brake Adjustment License, SMOG Inspector License) – Compensation to employees who obtain and maintain state–required mechanical licenses.

National Institute of Automotive Service Excellence (NIASE) Certificate – Compensation to mechanics who obtain and maintain a National Institute of Automotive Service Excellence (NIASE) certificate.

Notary Pay – Compensation to clerical employees who obtain and maintain a notary public certificate from the State of California or are deputized by an agency's chief administrative officer to sign legal or financial documents for the agency.

Paramedic Pay – Compensation to employees who obtain and maintain certification in auxiliary medical techniques.

Peace Officer Standard Training (POST) Certificate Pay – Compensation to local police officers, county peace officers and school police or security officers who obtain Peace Officer Standard Training (POST) certification.

Reading Specialist Premium – Compensation to certificated employees who have obtained special training and provide literacy instruction as part of their teaching duties.

Recertification Bonus – Compensation to local firefighters who obtain and maintain a fire safety and prevention certificate for a specified period of time.

Special Class Driver's License Pay – Compensation to school bus drivers or street maintenance employees who are required to obtain and maintain a special class driver's license to perform their duties.

Undergraduate/Graduate/Doctoral Credit – Compensation to school district employees who are required to obtain a specified degree.

(3) PREMIUM PAY

Temporary Upgrade Pay – Compensation to employees who are required by their employer or governing board or body to work in an upgraded position/classification of limited duration.

(4) SPECIAL ASSIGNMENT PAY

Accountant Premium – Compensation to rank and file employees who are routinely and consistently responsible for developing the employer's budget.

Administrative Secretary Premium – Compensation to an administrative secretary responsible for coordinating meetings, plans and other specialized activities for the governing body of the contracting agency or school employer.

Aircraft/Helicopter Pilot Premium – Compensation to safety employees who are routinely and consistently assigned as aircraft/helicopter pilots.

Asphalt Work Premium – Compensation to miscellaneous employees who are routinely and consistently assigned to mix, transport and/or apply a tar–like substance for sidewalks, roads, roofs and/or parking lots.

Audio Visual Premium – Compensation to miscellaneous employees who are routinely and consistently responsible for operating audio visual equipment.

Auditorium Preparation Premium – Compensation to school employees who are routinely and consistently assigned to prepare auditorium(s), i.e. setting up stages, lighting, props and chairs for performing arts purposes.

Bilingual Premium – Compensation to employees who are routinely and consistently assigned to positions requiring communication skills in languages other than English.

Branch Assignment Premium – Compensation to employees who are routinely and consistently assigned to a branch office or work site that is identified as "rural" or "remote" in the written labor agreement.

Canine Officer/Animal Premium – Compensation to local police officers, county peace officers and school police or security officers who are routinely and consistently assigned to handle, train and board a canine or horse. Compensation shall not include veterinarian fees, feed or other reimbursable expenses for upkeep of the animal.

Cement Finisher Premium – Compensation to miscellaneous employees who are routinely and consistently assigned to finish cement work, e.g. watering, brushing or surfacing.

Circulation Librarian Premium – Compensation to library staff who are routinely and consistently assigned to the circulation desk of the library.

Computer Operations Premium – Compensation to employees who have special knowledge of computer processes and applications.

Confidential Premium – Compensation to rank and file employees who are routinely and consistently assigned to sensitive positions requiring trust and discretion.

Contract Administrator Coordinator Premium – Compensation to school employees who routinely and consistently coordinate administrative contracts for instruction or facility maintenance.

Crime Scene Investigator Premium – Compensation to local police officers, county peace officers and school police or security officers who are routinely and consistently assigned to analyze and explore a crime scene.

Critical Care Differential Premium – Compensation to nursing staff who are routinely and consistently assigned to critical and intensive medical or psychological care areas.

D.A.R.E. Premium – Compensation to local police officers, county peace officers and school police or security officers who routinely and consistently provide training to students on drug abuse resistance.

Detective Division Premium – Compensation to local police officers, county peace officers and school police or security officers who are routinely and consistently assigned to a detective or investigative division or intelligence duties.

Detention Services Premium – Compensation to employees who are routinely and consistently assigned to areas where criminally charged persons are confined and nursing staff who are routinely and consistently assigned to an adult facility where criminally charged persons are confined.

DUI Traffic Officer Premium – Compensation to local police officers, county peace officers and school police or security officers who are routinely and consistently assigned to enforce Driving Under the Influence (DUI) of alcohol or drug laws.

Extradition Officer Premium – Compensation to local police officers and county peace officers who are routinely and consistently assigned to return a person to the custody of another jurisdiction.

Fire Inspector Premium – Compensation to "fire inspector" personnel who are routinely and consistently assigned to inspect buildings and other permanent structures for compliance with governmental safety standards.

Fire Investigator Premium – Compensation to "fire investigation" personnel who are routinely and consistently assigned to investigate causes of destructive burning.

Fire Prevention Assignment Premium – Compensation to rank and file local firefighters who are routinely and consistently assigned to specific fire inspections and investigative work during normal hours of employment that may differ from the work schedule of fire suppression personnel.

Fire Staff Premium – Compensation to rank and file local firefighters who are routinely and consistently assigned to administrative work during normal hours of employment that may differ from the work schedule of fire suppression personnel.

Flight Time Premium – Compensation to safety employees for time spent as co–pilot or crew on work related air missions.

Float Differential Premium – Compensation for nurses not specifically assigned to a specific station.

Front Desk Assignment (Jail) – Compensation to employees staffing a jail who are routinely and consistently assigned the duty of responding to questions from the public.

Fugitive Officer Premium – Compensation to local police officers and county peace officers who are routinely and consistently assigned to pursue persons who have or are fleeing from justice.

Gang Detail Assignment Premium – Compensation to local police officers, county peace officers and school police or security officers who are routinely and consistently assigned to enforce laws relating to a group of individuals banded together for unlawful activities.

Grading Assignment Premium – Compensation to employees who are routinely and consistently assigned to inspect the degree of rise or descent of a sloping surface.

Hazard Premium – Compensation to employees who are routinely and consistently exposed to toxic, radioactive, explosive or other hazardous substances or perform hazardous activities to implement health or safety procedures.

Heavy/Special Equipment Operator – Compensation to employees who are routinely and consistently assigned to operate heavy equipment or specialized equipment.

Height Premium – Compensation to employees who are routinely and consistently required to work on ladders or mechanical devices at heights over 40 feet.

Housing Specialist Premium – Compensation to city housing specialists who are routinely and consistently assigned to perform administrative functions of the housing division.

Juvenile Officer Premium – Compensation to local police officers, county peace officers and school police or security officers who are routinely and consistently assigned to enforce laws that restrict the activities of juveniles.

Lead Worker/Supervisor Premium – Compensation to employees who are routinely and consistently assigned to a lead or supervisory position over other employees, subordinate classifications, or agency–sponsored program participants.

Library Reference Desk Premium – Compensation to library staff who are routinely and consistently assigned to provide direction or resources to library patrons.

Maintenance Premiums:

Gas Maintenance Premium – Compensation to maintenance employees who are routinely and consistently assigned to inspect gas construction, repair instruments or perform pipeline welder duties.

Plumber Irrigation System Premium – Compensation to plumbers who are routinely and consistently assigned as irrigation systems plumbing specialists.

Refuse Collector Premium – Compensation to maintenance employees who are routinely and consistently assigned to collect refuse.

Street Lamp Replacement Premium – Compensation to maintenance employees who are routinely and consistently assigned to replace street lamps from an aerial bucket.

MCO Instructor Premium – Compensation to miscellaneous employees who are routinely and consistently assigned to train Motor Coach Operators, i.e. bus drivers.

Motorcycle Patrol Premium – Compensation to local police officers and county peace officers who are routinely and consistently assigned to operate and/or patrol on motorcycle.

Mounted Patrol Premium – Compensation to local police officers and county peace officers who are routinely and consistently assigned to patrol on horseback.

Narcotic Division Premium – Compensation to local police officers, county peace officers and school police or security officers who are routinely and consistently assigned to drug enforcement.

Paramedic Coordinator Premium – Compensation to paramedics who are routinely and consistently assigned to coordinate training activities in auxiliary medical techniques.

Park Construction Premium – Compensation to groundskeepers who are routinely and consistently assigned to build park equipment.

Park Maintenance/Equipment Manager Premium – Compensation to park maintenance employees who are routinely and consistently assigned to equipment management and other administrative duties.

Parking Citation Premium – Compensation to employees who are routinely and consistently assigned to read parking meters and cite drivers who have violated parking laws.

Patrol Premium – Compensation to local police officers, county peace officers and school police or security officers who are routinely and consistently assigned to patrol detail.

Police Administrative Officer – Compensation to rank and file police officers, county peace officers and school police or security officers who are routinely and consistently assigned to police administration to provide support for the police chief and command staff in the operation of the police department.

Police Investigator Premium – Compensation to rank and file local police officers, county peace officers and school police or security officers who are routinely and consistently assigned to analyze crimes or investigative accidents.

Police Liaison Premium – Compensation to rank and file local police officers, county peace officers and school police or security officers who are routinely and consistently assigned to function as a liaison between special persons, groups or courts and the police/sheriff department.

Police Polygraph Officer – Compensation to local police officers, county peace officers and school police or security officers who are routinely and consistently assigned to administer and interpret polygraph exams.

Police Records Assignment Premium – Compensation to employees who are routinely and consistently assigned to the police records division.

Rangemaster Premium – Compensation to local police officers, county peace officers and school police or security officers who are routinely and consistently assigned to supervise the target range facilities and all related activities.

Refugee Arrival Cleanup Premium – Compensation to employees who are routinely and consistently assigned to cleanup from activities directly related to refugee arrival flights.

Safety Officer Training/Coordinator Premium – Compensation to employees who are routinely and consistently assigned to instruct personnel in safety procedures.

Sandblasting Premium – Compensation to miscellaneous employees who are routinely and consistently assigned to operate sandblasting equipment.

School Yard Premium – Compensation to part–time school district employees who are routinely and consistently assigned to supervise students during recreation.

Search Pay Premium – Compensation to employees who are routinely and consistently assigned to search and process prisoners in the induction area of jails.

Severely Disabled Premium – Compensation to school instructional aides who are routinely and consistently assigned to work with severely disabled students.

Sewer Crew Premium – Compensation to laborers who are routinely and consistently assigned to repair and maintain sewer systems.

Shift Differential – Compensation to employees who are routinely and consistently scheduled to work other than a standard "daytime" shift, e.g. graveyard shift, swing shift, shift change, rotating shift, split shift or weekends.

Solo Patrol Premium – Compensation to local police officers, county peace officers and school police or security officers who are routinely and consistently assigned to patrol alone in vehicles.

Sprinkler and Backflow Premium – Compensation to groundskeepers who are routinely and consistently assigned to repair large sprinkler head controllers, valves and backflow prevention devices.

Tiller Premium – Compensation to local firefighters who are routinely and consistently assigned to operate the tiller on an aerial ladder.

Tire Technician Premium – Compensation to equipment attendants who are routinely and consistently assigned to work on heavy duty tires, e.g. for buses and large construction equipment.

Traffic Detail Premium – Compensation to employees who are routinely and consistently assigned to direct traffic.

Training Premium – Compensation to employees who are routinely and consistently assigned to train employees.

Tree Crew Premium – Compensation to maintenance workers who are routinely and consistently assigned to remove, prune, or otherwise care for trees.

Utility Meter Premium – Compensation to miscellaneous employees who are routinely and consistently assigned to re–read utility meters, repair or set and install meters.

Utilities Systems Operation Premium – Compensation to maintenance or carpenter employees who are routinely and consistently assigned to planner duties in the maintenance division.

Water Certification Premium – Compensation to miscellaneous employees who are routinely and consistently assigned to test local water quality for compliance with governmental health standards.

(5) STATUTORY ITEMS

Fair Labor Standards Act (FLSA) – Compensation paid for normal full–time work schedule including premium pay required by FLSA. For example, a firefighter's normal work schedule is 56 hours per week. FLSA states premium pay must be paid on all hours worked above 53 hours per week up to what is considered normal for employees on a full–time basis. In this example, the firefighter works 56 hours in a normal work week. Therefore compensation would be reported for 53 hours per

week and FLSA premium pay would be reported for 3 hours per week. Any work performed above 56 hours per week would be considered overtime and would not be reported to PERS.

Holiday Pay – Additional compensation for employees who are normally required to work on an approved holiday because they work in positions that require scheduled staffing without regard to holidays. If these employees are paid over and above their normal monthly rate of pay for approved holidays, the additional compensation is holiday pay and reportable to PERS.

For those employees with written labor agreements providing holiday credit and allowing employees to cash out accumulated holiday credit, the cash out must be done at least annually and reported in the period earned. If a written labor agreement allows an employee to accumulate holiday credit beyond the year in which it is earned and an employee later elects to cash out accumulated holiday credit, it is not compensation for PERS purposes.

If an employee utilizes the cash out option only during his/her final compensation period, it will be considered final settlement pay and excluded from reportable compensation. If the cash out option is also utilized near his/her final compensation period, it may still be excluded based upon a review of the contracting agency or school employer's experience relating to: the number of employees in the group with this option; the number of employees who exercise this option; the frequency with which employees exercise this option; whether or not the cash out is paid periodically, and in a manner that is historically consistent; and whether or not the cash out would create an unfunded liability over and above PERS' actuarial assumptions. This review will be conducted by PERS on a case–by–base basis.

Uniform Allowance – Compensation paid or the monetary value for the purchase, rental and/or maintenance of required clothing, including clothing made from specially designed protective fabrics, which is a ready substitute for personal attire the employee would otherwise have to acquire and maintain. This excludes items that are solely for personal health and safety such as protective vests, pistols, bullets, and safety shoes.

(b) The Board has determined that all items of special compensation listed in subsection (a) are:

(1) Contained in a written labor policy or agreement;

(2) Available to all members in the group or class;

(3) Part of normally required duties;

(4) Performed during normal hours of employment;

(5) Paid periodically as earned;

(6) Historically consistent with prior payments for the job classification;

(7) Not paid exclusively in the final compensation period;

(8) Not final settlement pay; and

(9) Not creating an unfunded liability over and above PERS' actuarial assumptions.

(c) Only items listed in subsection (a) have been affirmatively determined to be special compensation. All items of special compensation reported to PERS will be subject to review for continued conformity with all of the standards listed in subsection (b).

(d) If an items of special compensation is not listed in subsection (a), or is out of compliance with any of the standards in subsection (b) as reported for an individual, then it shall not be used to calculate final compensation for that individual.

NOTE: Authority cited: Sections 20636(c)(6) and 20121, Government Code; Calif. Const. Art. XVI, Section 17. Reference: Sections 20630, 20636 and 20691, Government Code.

RESEARCH NOTE: See *Oden v. Public Employees' Retirement System* (1994) 23 Cal.App.4th 194 [28 Cal.Rptr.2d 388]; *City of Sacramento v. Public Employees' Retirement System* (1991) 237 Cal.App.3d 1470 [280 Cal.Rptr. 847]; *City of Fremont v. Board of Administration* (1989) 219 Cal.App.3d 1026 [263 Cal.Rptr. 164]; *Guelfi v. Marin County Employees' Retirement Association* (1983) 145 Cal.App.3d 297 [193 Cal.Rptr. 343]; *Rose v. City of Hayward* (1981) 126 Cal.App.3d 926 [179 Cal.Rptr. 287]; *Santa Monica P.O.A. v. Bd. of Admin. Public Employees' Retirement System* (1978) 69 Cal.App.3d 96 [137 Cal.Rptr.771].

HISTORY

1. New section filed 7–5–94 as an emergency; operative 7–5–94 (Register 94, No. 27). A Certificate of Compliance must be transmitted to OAL by 11–2–94 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 7–5–94 order transmitted to OAL 10–28–94; disapproved by OAL and order of repeal as to 7–5–94 order filed on 12–14–94 (Register 94, No. 50).
3. New section refiled 12–15–94 as an emergency, with amendments; operative 12–15–94 (Register 94, No. 50). A Certificate of Compliance must be transmitted to OAL by 4–14–95 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 12–15–94 order including amendments transmitted to OAL 4–11–95 and filed 5–23–95 (Register 95, No. 21).
5. Amendment of subsections (a)–(a)(1), new subsections (a)(1)(A)–(F) and amendment of NOTE filed 9–22–99; operative 10–22–99 (Register 99, No. 39).
6. Amendment of subsection (a)(5) filed 5–22–2002; operative 6–21–2002 (Register 2002, No. 21).

§ 572. Employees Not In a Group or Class of Employment.

An employee who is not in a "group or class of employment" within the meaning of the Public Employees' Retirement Law, may request an exception from the "average increase" procedure set forth in Section 20023(e). The local employer may request this exception on the employees behalf.

The request must be submitted in writing, no later than 30 days after the employee first received PERS' estimate of benefits payable. If the estimate is mailed, the 30–day deadline is thirty–five calendar days after the postmark date. The request must be submitted to the:

Member Services Division
Public Employees' Retirement System
P.O. Box 942704
Sacramento, CA 94229–2704

PERS will acknowledge the request in writing, within 15 calendar days of its receipt. PERS will grant or deny the request, and specify its reasons in writing, within 45 days from the date of acknowledgement. PERS' decision to grant or deny the request will be based on a comparison between increased compensation earnable, as reported for the employee during his or her period of final compensation and compensation earnable reported for the group or class of employees in his or her same membership classification.

PERS will review the full history of payroll reporting for the employee, and all relevant payroll reporting for the membership classification, as to both payrate and special compensation. In no case will an exception be granted if PERS determines that the comparative increase in compensation earnable by the employee fails to conform with the following standards set forth in subsections (a) and (b) below as well as other applicable provisions of the law.

(a) If reported in payrate, the increased compensation must be:

(1) Contained in a written labor agreement;

(2) Part of normally–required duties;

(3) Performed during normal hours of employment;

(4) Paid periodically as earned;

(5) Historically consistent with prior payments for the membership classification; and

(6) Not final settlement pay.

(b) If reported in special compensation, the increased compensation must be:

(1) Contained in a written labor agreement;

(2) Part of normally–required duties;

(3) Performed during normal hours of employment;

(4) Paid periodically as earned;

(5) Historically consistent with prior payments for the membership classification;

(6) Listed as special compensation in Section 571; and

(7) Not final settlement pay.

(c) Reported increased compensation must not constitute "final settlement pay" within the meaning of Section 570 and Section 20023 of the Government Code. It must conform with federal Internal Revenue Code

standards in Section 415 for maintaining "qualified plan status" of the System, and in Section 401, including the "non-discrimination testing".

If the request is denied, the employee or employer may appeal PERS' decision to the Board by the procedure set forth in Sections 555.1–555.4, and Section 20133 of the Government Code.

NOTE: Authority cited: Sections 20023(e) and 20120, Government Code. Reference: Section 20023, Government Code; IRC Sections 401, 415.

RESEARCH NOTE: *Oden v. Public Employees' Retirement System* (1994) 23 Cal.App.4th 194 [28 Cal.Rptr.2d 388]; *City of Sacramento v. Public Employees' Retirement System* (1991) 229 Cal.App.3d 1470 [280 Cal.Rptr. 847]; *Santa Monica P.O.A. v. Bd. of Admin. Public Employees' Retirement System* (1978) 69 Cal.App.3d 96 [137 Cal.Rptr. 771].

HISTORY

1. New section filed 7–5–94 as an emergency; operative 7–5–94 (Register 94, No. 27). A Certificate of Compliance must be transmitted to OAL by 11–2–94 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance, including amendment of section heading and text, as to 7–5–94 order transmitted to OAL 10–28–94 and filed 12–14–94 (Register 94, No. 50).

§ 573. Optional Membership.

Compensation and compensation earnable for members in the optional categories authorized in Section 20322 (referred to hereafter in this regulation as "optional members"), must be reported by contracting agency and school employers pursuant to the same statutory and regulatory requirements that apply to all other members.

(a) Specifically, said compensation shall conform to the "group or class" requirements that apply to payrate and items of special compensation, as shown below:

(1) Contained in a written labor agreement;

(2) Part of normally-required duties;

(3) Performed during normal hours of employment;

(4) Paid periodically as earned;

(5) Historically consistent with prior payments for the membership classifications; and

(6) Not final settlement pay.

(b) For persons who become optional members before July 1, 1994 by virtue of their position as a "city attorney" or "assistant city attorney" the following standards shall also apply:

(1) If compensation or compensation earnable (whether reported as payrate or special compensation) are set forth in a contract for legal services, then that contract shall be the equivalent of a written labor agreement.

(2) Compensation and compensation earnable shall be limited to payment for work performed by the optional member in his or her individual capacity as the city attorney or assistant city attorney, and shall not include payment for work performed by other persons (e.g., partner, associate, consultant) in the office of city attorney or a law firm that provides the services of a city attorney.

NOTE: Authority cited: Sections 20636 and 20121, Government Code. Reference: Sections 20322, 20630 and 20636, Government Code.

HISTORY

1. New section filed 9–22–99; operative 10–22–99 (Register 99, No. 39).

Article 5. Member Contributions

§ 575. Refund of Additional Contributions.

Contributions made by a member pursuant to Section 20630, Government Code, in excess of normal contributions, shall be refunded on written application filed in the office of the board at any time; provided, however, that such refund may not be made within one year following the date of any previous refund of additional contributions, and provided further that a partial refund shall not be made. Such refund may be authorized by the board notwithstanding the limitations herein with respect to the date of previous refund upon a showing of good cause therefor.

NOTE: Authority cited: Section 20120, Government Code. Reference: Section 20630, Government Code.

HISTORY

1. Amendment filed 1–30–80; effective thirtieth day thereafter (Register 80, No. 5).

§ 575.1. Deposit of Contributions.

Any deposit of contributions for, but not limited to, service credit elections, except those made pursuant to Government Code section 21073.1, to be made in installments, must be made by payroll deduction upon such installment plan as may be elected, subject to the following conditions:

(a) Installments must be uniform for each payroll period;

(b) The installments may not be less than $15.00 per month (or the semi-monthly, bi-weekly or quadri-weekly equivalent); and

(c) The number of installments may not exceed 180 monthly (or the semi-monthly, bi-weekly or quadri-weekly equivalent) payroll periods.

(d) Interest on the unpaid balance of the amount payable to the Public Employees' Retirement Fund, except as provided in subsections (e) and (f), shall accrue at the member interest crediting rate provided in section 20178 on the effective date of the member's election or contribution adjustment.

(e) Interest on the unpaid balance of the amount payable to the Public Employees' Retirement Fund for a member's election to receive service credit subject to section 21052 shall accrue at the actuarial interest rate used in the calculation of the benefit liability.

(f) Interest on the unpaid balance of the amount payable to the Judges' Retirement Fund or the Judges' Retirement Fund II for a judge's election to receive service credit, pursuant to section 75030.8 or 75506.5, shall accrue at the actuarial interest rate used in the calculation of the benefit liability.

For purposes of this section, the applicable interest rate provided in subsections (d), (e), and (f) shall be applied from the effective date of the service credit election or contribution adjustment through the completion of payments.

An installment plan elected by a member or judge may be modified to extend the period of payment upon the Board's finding that the existing plan is effecting a hardship for the member or judge provided, however, that the plan as extended does not result in a total number of deductions, including the number already paid, exceeding the maximum permitted under this section and otherwise complies with this section.

NOTE: Authority cited: Sections 20120 and 20121, Government Code. Reference: Sections 20750 and 21050, Government Code.

HISTORY

1. New section filed 2–16–72; designated effective 4–1–72 (Register 72, No. 8).
2. Amendment of section and NOTE filed 5–8–2000; operative 6–7–2000 (Register 2000, No. 19).
3. Amendment of section and NOTE filed 7–6–2006; operative 8–5–2006 (Register 2006, No. 27).

§ 575.2. Deposit of Contributions Pursuant to Government Code Section 21073.1.

Any deposit of contributions for a member service credit election pursuant to Government Code section 21073.1, to be made in installments, must be made by payroll deduction upon such installment plan as may be elected by the member, subject to the following conditions:

(a) Installments must be uniform for each payroll period;

(b) The installments may not be less than $15.00 per month (or the semi-monthly, bi-weekly or quadri-weekly equivalent); and

(c) The number of installments may not exceed 180 monthly (or the semi-monthly, bi-weekly or quadri-weekly equivalent) payroll periods.

(d) Interest on the unpaid balance of the amount payable to the Public Employees' Retirement Fund shall accrue at the member interest crediting rate provided in section 20178 on the effective date of the member's election.

For purposes of this section, the interest rate provided in subsection (d) shall be applied from the effective date of the member's election through the completion of payments.

An installment plan adopted by a member may be modified to extend the period of payment upon the Board's finding that the existing plan is effecting a hardship for the member provided, however, that the plan as extended does not result in a total number of deductions, including the

number already paid, exceeding the maximum permitted under this section and otherwise complies with this section.

NOTE: Authority cited: Sections 20120, 20121 and 21073.1, Government Code. Reference: Section 21073.1, Government Code.

HISTORY

1. New section filed 5–4–2000; operative 5–4–2000 pursuant to Government Code section 11343.4(d). Exempt from OAL review pursuant to Government Code section 21073.1 (Register 2000, No. 18).
2. Amendment of introductory paragraph, new subsection (d) and new penultimate paragraph filed 7–6–2006; operative 8–5–2006 (Register 2006, No. 27).

§ 576. Additional Contributions by Employer.

(a) An employer's election, pursuant to Section 20630, Government Code, to make additional contributions, shall be made by filing with the Board a copy of formal action taken by the employer's governing body. Such election shall be effective with respect to payroll periods beginning on and after the date specified by the governing body but no earlier than the 30th day following filing in the office of the Board.

(b) An employer's election to make such additional contributions is subject to the following conditions:

(1) Such additional contributions must be separately identified and reported to the Board on the regular payroll reports of the employer each time a payment is made.

(2) The employer shall provide each affected employee with an annual and accumulative statement of the specific amounts contributed by the employer to that employee's additional contribution account.

NOTE: Authority cited: Sections 20120–20124, Government Code. Reference: Sections 20107, 20630, 21382.5 and 21364.2, Government Code.

HISTORY

1. New section filed 2–26–75; effective thirtieth day thereafter (Register 75, No. 9).
2. Amendment of subsection (b) filed 6–18–76; effective thirtieth day thereafter (Register 76, No. 25).

Article 6. Service Credit

(No Rules Filed)

Article 7. Benefits

§ 580. Dependency.

A person is receiving at least one–half of his support from a member if the member is making regular contributions in cash or kind to such support to the extent of one–half or more thereof.

(a) "Support," includes food, shelter, clothing, ordinary medical expenses, and other ordinary and customary items of maintenance of the persons supported at the standard of living in the occupation or employment engaged in by the person supported while he was employable. In determining support at the time of death, consideration may be given to support during the year preceding death. To the extent that the person supported and other persons derive support from a common fund or receive a common item of support and expenditures cannot be identified as to person and disproportionate support requirements are not shown, the person's support shall be established by equal proration of the total expenditures between the persons.

(b) A contribution made to a fund to which several persons contribute and from which several members of a family derive common support will be presumed made to the support of each person deriving support from the fund in the proportion of such contribution to the total contribution. Community funds of a member and a member's spouse contributed to the support of the member's parent or parents will be considered a contribution by the member to a maximum of the amount of community funds or property considered the property of the member under this rule.

(c) Any person claiming a benefit as a dependent parent shall file an affidavit or statement under penalty of perjury concerning the income and support in such form or forms and in such detail as may be required by the Executive Officer.

NOTE: Authority cited: Section 20120, Government Code. Reference: Sections 20041, 21263, 21263.4, and 21382.2, Government Code.

HISTORY

1. Amendment filed 8–5–76; effective thirtieth day thereafter (Register 76, No. 32).
2. Editorial correction of Reference cite (Register 95, No. 5).

§ 580.1. Full–Time Student—Educational Institution.

For purposes of any benefit payable to or because of a child who is a full–time student, a full–time student is one who is in full–time attendance at an educational institution if he is carrying a subject load which is considered full time for day students under the standards and practices of the educational institution. However, a student will not be considered in full–time attendance if:

A. He is enrolled in a junior college, college, or university in a course of study of less than 13 school weeks' duration; or

B. He is enrolled in any other educational institution and either the course of study is less than 13 school weeks' duration or his scheduled attendance is at the rate of less than 20 hours a week.

A high school, trade or vocational school, junior college, college or university is an "educational institution" if:

(a) It is operated or directly supported by the United States, by a State or local government or a political subdivision thereof; or

(b) It has been approved by a State, or accredited by a State–recognized or nationally–recognized accrediting agency; as determined by the Executive Officer.

This definition includes both public and private schools which meet the requirements of (a) or (b) above.

Survivor benefits will be reduced or discontinued effective the month following loss of student status as determined under forms and procedures established by the Executive Officer.

NOTE: Authority cited: Sections 20120–20124, Gov. Code. Reference: Section 21382.5, Gov. Code.

HISTORY

1. New Section filed 10–22–69 as an emergency; designated effective 11–10–69 (Register 69, No. 43).
2. Certificate of Compliance—Section 11422.1, Gov. Code, filed 12–30–69 (Register 70, No. 1).
3. Amendment filed 2–26–75; effective thirtieth day thereafter (Register 75, No. 9).

§ 581. Retirement Allowance Deductions.

(a) Approval of Group Insurance Plans.

Any contracting agency under the Public Employees' Retirement System having an insurance plan for its active and retired employees or retired employees or any association composed of employees and persons retired under the Public Employees' Retirement System, or of such retired persons having an insurance plan for its membership, may submit such plan to the board for approval.

(1) Eligibility.

Any person retired under the Public Employees' Retirement System and any beneficiary under the system who is eligible for coverage under an insurance plan approved by the board, may authorize, pursuant to these rules, deductions to be made from monthly payments of his retirement allowance or benefit for payment of premiums, dues, or charges under such plan.

(2) Forms and Procedures.

The executive officer shall prescribe, subject to these rules, procedures and forms for the filing of authorizations.

(3) Place of Filing.

Authorization shall be filed in the office of the board provided, however, that the executive officer may prescribe in the alternative, filing with the insurer or nonprofit membership corporation issuing the insurance plan, if such insurer or corporation has undertaken in a writing filed with the board to:

(A) Supply to the board statements of deductions as specified in authorizations received by it and to save the State, the board and its employees harmless from liability for any errors in withholding or transmitting deductions except for moneys actually withheld but not transmitted.

(B) Keep all authorizations received by it available for inspection by authorized representatives of the board.

(4) Time of Filing.

Authorizations may be made effective only with regard to retirement allowance payments and premiums, dues or charges becoming due more than 30 days after the date of receipt in the office of the board of the authorization, or, where the alternative procedure under these rules is prescribed by the executive officer, of the insurer's or nonprofit membership corporation's statement of authorized deductions.

(5) Authorization Changes.

Deductions may be changed in amount or terminated in the manner provided for filing of authorizations and may be made effective only as to retirement allowances payable more than 30 days after notice is received in the office of the board.

(6) Refunds.

Any amounts which have been deducted and paid to an insurer or nonprofit membership corporation and which are refundable under the insurance plan because of death of the retired person, shall be refunded to the board for distribution under the Public Employees' Retirement Law.

(b) Forms and Procedures for Deductions of National Service Life Insurance.

The executive officer shall provide forms and procedures for authorization by persons retired under the Public Employees' Retirement System of deductions from retirement allowances for payment of premiums on National Service Life Insurance or United States Government Converted Insurance.

(1) Time and Place of Filing.

[The next page is 52.7.]

Authorizations under this article shall be filed in the office of the board and may be given effect only as to retirement allowances payable and premiums becoming due more than 30 days after receipt of the authorization in the office of the board.

(c) Deduction of Employee Association Dues or Credit Union Payments or Shares.

(1) Eligibility and Conditions.

A retired person who was a state member and who is a member of any bona fide association comprised principally of employees and former employees of agencies of the State of California may authorize monthly deduction of dues of such Association, or any retired member or beneficiary who is a member of a credit union may authorize monthly deductions for payments or shares to credit unions from his retirement allowance subject to the following conditions:

(A) The Association or credit union has filed with the Public Employees' Retirement System a written request for such deduction in accordance with this subsection, and the executive officer finds in connection with such request that there is compliance with this subsection.

(B) The retired person's written authorization for deduction is filed with the Association or credit union.

(C) The Association or credit union will keep all authorizations received by it available for inspection by an authorized representative of the Board.

(D) The Association or credit union has filed an agreement which holds the Retirement System harmless from any liability except for dues or payments actually withheld but not transmitted.

(E) Any dues or payments deducted in error shall be offset, or refunded to the Board for distribution in accordance with the Public Employees' Retirement Law.

(F) The allowance of the retired person continues sufficient in amount to permit such deductions after giving effect to requests for income tax deductions and medical–hospital and life insurance premiums.

(2) Forms and Procedures.

The executive officer shall prescribe, subject to these rules, procedures and forms for the implementation of this subsection.

(3) Cost Reimbursement.

The executive officer shall determine the administrative costs from time to time for processing and making such deductions and is authorized to collect such charges by either a withholding from amounts deducted for the Association or credit union or by a direct billing.

(4) Time and Place of Filing.

(A) Authorizations for deductions under this section may be made effective only with regard to retirement allowances payable more than 30 days after receipt in the office of the Board in Sacramento of the Notice of Authorization. No retroactive deductions will be taken.

(B) Deductions may be changed in amount or terminated in the manner provided for filing Notices of Authorization and may be made effective only as to retirement allowances payable more than 30 days after notice is received in the Sacramento office of the Board.

NOTE: Authority cited: Section 20120, Government Code. Reference: Section 20135, Government Code.

HISTORY

1. Amendment of subsection (c) filed 2–3–78; effective thirtieth day thereafter (Register 78, No. 4). For prior history, see Register 70, No. 16.

§ 582. Beneficiary Designations.

A member may designate as beneficiary to receive any benefit payable to a member's designated beneficiary upon death before or after retirement, any person or persons, including a corporation; provided, however, that a beneficiary designated to receive payments under an optional settlement based on life contingency may be only a natural person. The designation must be in writing, except as otherwise provided in this section, must give the name of the person and his address, and must be filed in the office of the board in Sacramento, California. The right of a beneficiary to receive payment of a benefit is contingent on his survival at the time of the member's death, and the member may designate a beneficiary or beneficiaries on the contingency that the first beneficiary does not so qualify.

A member may, subject to the conditions set forth in this paragraph, designate as beneficiaries or contingent beneficiaries, other than a beneficiary to receive payment under an optional settlement based on life contingency of the beneficiary, his children or his grandchildren by class rather than by naming the individuals as otherwise required in this section. For purposes of such designation, "children" shall mean natural or adopted children and "grandchildren " shall mean natural or adopted children of the member's "children," and shall include such children or grandchildren in being at the time of the member's death or who are conceived before the member's death and born thereafter. Payments of a benefit by the system on the basis of a determination in good faith of the existence and identity of the members of a class so designated shall constitute a complete discharge and release of the system from further liability for the benefit, notwithstanding that it may not have discovered a beneficiary otherwise entitled.

NOTE: Authority cited: Section 20120, Government Code. Reference: Sections 20303, 20037, 21204 and 21205, Government Code.

HISTORY

1. New section filed 12–15–61; effective thirtieth day thereafter (Register 61, No. 25).
2. Amendment filed 12–13–66; effective thirtieth day thereafter (Register 66, No. 44).

§ 583. Election of Survivor Coverage.

An election of 1959 survivor allowance coverage as provided for by Section 21385 of the Government Code shall be subject to the following conditions:

(1) Notice of right to elect 1959 survivor coverage shall be provided by the System to contracting agencies subject to Chapter 9, Article 6 of the Government Code. It shall be the contracting agency's responsibility to notify eligible members of their right to elect hereunder.

(2) Eligible members who are employees of a contracting agency on the date such agency becomes subject to Government Code Section 21385 shall have the right to elect 1959 survivor allowance coverage. Such election must be made prior to or within 30 days of the effective date of the contracting agency's amendment to become subject to Section 21385.

(3) Members who are employees of a contracting agency on the date such agency becomes subject to Government Code Section 21385, and who elected not to be covered during the initial election period, shall have a second right of election within a three–month period beginning nine months following the effective date of the agency's contract for such coverage.

(4) To be valid, elections may be made only by the member personally in writing in the format prescribed by the Executive Officer and must be received at an office of the Board within the prescribed time periods. A member's failure to submit a valid election will be deemed an election to not be covered by the 1959 survivor allowance.

(5) A contracting agency's election to be subject to Government Code Section 21382.2 in lieu of Government Code Section 21382 shall not create a new right of election by employees of that agency.

(6) A member's effective date of coverage shall be (a) the date a valid election is received by the Board, during the first election period; or (b) the date which is one year following the effective date of the agency's contract for such coverage with respect to valid elections during the second election period; or (c) the date of membership for members entering employment after the date of the agency's contract for such coverage.

(7) Contributions for a member so electing shall begin in the pay period during which coverage becomes effective.

NOTE: Authority cited: Sections 20120–20124 and 21385, Government Code. Reference: Section 21385, Government Code.

HISTORY

1. New section filed 10–22–69 as an emergency; designated effective 11–10–69 (Register 69, No. 43).
2. Certificate of Compliance—Section 11422.1, Gov. Code, filed 12–30–69 (Register 70, No. 1).

3. Amendment filed 4–30–74 as an emergency; effective upon filing (Register 74, No. 18).
4. Amendment filed 9–6–74; effective thirtieth day thereafter (Register 74, No. 36).
5. Repealer and new section filed 6–11–82; effective thirtieth day thereafter (Register 82, No. 24).

§ 585. Retirement Optional Settlement 4.

(a) For purposes of any request for a new form of optional settlement 4 subject to the approval of the board, the request must comply with applicable federal and state requirements and the following administrative requirements. If staff determines a request for a new option 4 allowance type should be denied based upon administrative criteria, stall will bring the request before the board to either approve or deny the request.

(1) There is no existing option or option 4 type that could be used to accomplish substantially the same results.

(2) Each beneficiary would receive a minimum of 25% of the member's monthly allowance. This minimum would not apply in the case of a community property interest.

(3) Each beneficiary is alive and named at the time of the designation.

(4) Upon the death of a beneficiary, there would be no continuing allowance to a secondary or contingent beneficiary.

(5) Any proposed change in future allowance payment to the retired annuitant or named beneficiary is based upon an easily identifiable event, such as a specified date or death of the retired annuitant.

(6) The requested annuity is a combination of life annuities, joint life annuities (on no more than two lives), a temporary life annuity, an annuity certain, or lump sums payable upon the death of the member or a beneficiary.

(7) The total of all lump sums payable upon death cannot exceed the amount of the member's contributions with interest at the time of retirement.

(8) The total amount (excluding lump sums payable upon death) payable in any month cannot exceed three times the amount that would have been payable for that month if the member had elected an unreduced allowance and was alive in the month.

(9) It is reasonable to expect that at least 100 members will elect the option within two years of the date that the option first becomes available.

(b) The Board may, in its discretion, establish a review period for any approved option 4 allowance type to monitor conformity with the standards in subsection (a) and may, on a prospective basis, terminate any current or added option 4 allowance type in subsection (c) that does not conform to those standards.

(c) The following alternative forms of option 4 allowance have been approved by the Board. However, the amount to be paid to the beneficiary cannot be more than what the member could provide the beneficiary under option 2W.

(1) "Specific Dollar Amount to a Beneficiary"

The member may specify that upon his or her death after retirement, a monthly allowance in an amount determined by the member be paid to a named beneficiary for life.

(2) "Specific Percentage to a Beneficiary"

The member may specify that upon his or her death after retirement, a monthly allowance in an amount equivalent to a specified percentage of the member's unmodified allowance be paid to a named beneficiary for life. Or, a member may specify that upon the death of either the member or named beneficiary, the survivor would receive a certain percentage of the member's unmodified allowance.

(3) "Option 2W and Option 1 Combined"

The member may specify the same monthly allowance the member is receiving continue to be paid to his or her named beneficiary upon the member's death and that upon the subsequent death of the named beneficiary, any member contributions not used to fund the allowance be paid in a lump sum to a secondary beneficiary or beneficiaries.

(4) "Reduced Allowance for Fixed Period of Time"

The member may specify a percentage of his or her unmodified allowance to be received for a fixed period of time immediately following retirement. At the end of the specified period, the member begins to receive an increased allowance that is the actuarial equivalent of his or her remaining benefit. The allowance may be based on the member's life alone or on the joint lifetimes of the member and a named beneficiary.

(5) "Multiple Lifetime Beneficiaries"

The member may name more than one beneficiary to receive a lifetime monthly allowance following the death of the member after retirement.

(6) "Option 3W and Option 1 Combined"

The member may specify that one–half of the monthly allowance the member is receiving continue to be paid to his or her named beneficiary upon the member's death and that upon the subsequent death of the named beneficiary, any member contributions not used to fund the allowance be paid in a lump sum to a secondary beneficiary or beneficiaries.

(7) "Reduction upon Death of Retiree or Named Beneficiary"

The member may specify a minimal reduction of at least one dollar to the unmodified allowance to provide the highest allowance possible while both the member and beneficiary are living. Upon the death of either of them, the continuing allowance will be significantly reduced for the survivor.

NOTE: Authority cited: Sections 20121 and 21458, Government Code. Reference: Section 21458, Government Code.

HISTORY

1. New section filed 4–26–2004; operative 5–26–2004 (Register 2004, No. 18).

Article 7.5. Normal Retirement Age and Bona Fide Separation in Service

§ 586. Purpose.

The purpose of this Article is to ensure the federal tax–qualified status of the Public Employees' Retirement System by prohibiting in–service distributions to the extent required by the Internal Revenue Code, and the regulations promulgated thereunder. In the event the applicable federal law changes, the federal law shall supercede these regulations.

NOTE: Authority cited: Sections 20121 and 21220.5, Government Code. Reference: Section 21220.5, Government Code.

HISTORY

1. New article 7.5 (sections 586–586.2) and section filed 8–20–2004; operative 9–19–2004 (Register 2004, No. 34).

§ 586.1. Normal Retirement Age.

(a) The normal retirement age of a member shall be the later of:

(1) the age when the member is first eligible to retire pursuant to Article 1 through Article 5 of Chapter 12, Part 3, Division 5 of Title 2 of the Government Code; or

(2) the highest specified age applicable to the member in the benefit formula, where the highest specified age is defined as:

(A) 65 if the member is entitled to benefits under Government Code sections 20176 or 21100;

(B) 60 if the member is entitled to benefits under Government Code sections 21353 or 21354.3;

(C) 55 if the member is entitled to benefits under Government Code sections 21354, 21354.1, 21354.5, 21363, 21363.1, 21366, 21369, or 21369.1; and

(D) 50 if the member is entitled to benefits under Government Code sections 21362, 21362.2, 21363.3, 21363.4 or 21363.8.

(b) In the event an existing benefit formula is modified or a new benefit formula is enacted, the chief actuary may determine the normal retirement age until such time that the regulations may be amended.

NOTE: Authority cited: Sections 20121 and 21220.5, Government Code. Reference: Section 21220.5, Government Code.

HISTORY

1. New section filed 8–20–2004; operative 9–19–2004 (Register 2004, No. 34).

§ 586.2. Bona Fide Separation in Service.

(a) For purposes of working for a CalPERS–covered employer after retirement pursuant to Article 8, of Chapter 12, Part 3, Division 5 of Title

2 of the Government Code, a member who has not attained normal retirement age shall have a bona fide separation in service. A bona fide separation in service is defined as:

(1) no predetermined agreement between the employer and the member prior to retirement to return to work for the employer after retirement; and

(2) a separation in service of at least 60 calendar days between the date of the member's retirement and the first day of work for the employer as a retired person. The 60 days shall commence on the day after retirement.

(b) Any retired person employed in violation of this regulation shall be subject to the consequences provided in Government Code section 21220.

(c) In the event an emergency has been declared as provided in Government Code Section 8558 that requires the employment of a retired person, the 60 calendar day separation in service requirement set forth in subdivision (a)(2) of this regulation shall not apply.

NOTE: Authority cited: Sections 20121 and 21220.5, Government Code. Reference: Section 21220.5, Government Code.

HISTORY

1. New section filed 8-20-2004; operative 9-19-2004 (Register 2004, No. 34).

Article 7.6. Participation in Risk Pools

§ 588. Risk Pools — Definitions.

(a) For purposes of this Article, a "Rate Plan" consists of all CalPERS members for which a single employer contribution rate is produced annually.

(b) For purposes of this Article, a "Side Fund" shall be the difference between the actuarial value of assets and the actuarial liabilities of the rate plan at the time of joining a risk pool.

NOTE: Authority cited: Sections 20120, 20121 and 20840, Government Code. Reference: Section 20840, Government Code.

HISTORY

1. New article 7.6 (sections 588–588.10) and section filed 9-23-2004; operative 9-23-2004 pursuant to Government Code section 11343.4 (Register 2004, No. 39).

§ 588.1. Risk Pools — Required Participation for Existing Contracting Agencies.

Following the creation of risk pools pursuant to Section 20840 of the Government Code, any existing contracting agency with a rate plan of less than 100 active members on any annual actuarial valuation date shall be required to participate in a risk pool. Participation shall be effective as of that valuation date for all members of that rate plan, but no earlier than the June 30, 2003 actuarial valuation which will be used to set employer contribution rates for fiscal year 2005–2006.

NOTE: Authority cited: Sections 20120, 20121 and 20840, Government Code. Reference: Section 20840, Government Code.

HISTORY

1. New section filed 9-23-2004; operative 9-23-2004 pursuant to Government Code section 11343.4 (Register 2004, No. 39).

§ 588.2. Risk Pools — Required Participation for New Contracting Agencies.

A new contracting agency with CalPERS following the creation of risk pools shall be required to participate in a risk pool if the number of active members in the rate plan is less than 100 at the time of the initial actuarial valuation.

NOTE: Authority cited: Sections 20120, 20121 and 20840, Government Code. Reference: Section 20840, Government Code.

HISTORY

1. New section filed 9-23-2004; operative 9-23-2004 pursuant to Government Code section 11343.4 (Register 2004, No. 39).

§ 588.3. Risk Pools —Optional Participation.

A contracting agency with 100 or more active members on each annual valuation date after June 30, 2003 may, by amendment to its contract, participate in a risk pool provided that the actuary determines such participation will not be unfavorable to other agencies in the pool. In the event that such participation would be unfavorable, the matter may be referred to the CalPERS Board for a hearing.

NOTE: Authority cited: Sections 20120, 20121 and 20840, Government Code. Reference: Section 20840, Government Code.

HISTORY

1. New section filed 9-23-2004; operative 9-23-2004 pursuant to Government Code section 11343.4 (Register 2004, No. 39).

§ 588.4. Risk Pools — County Offices of Education, School Districts and Community College Districts.

Notwithstanding Section 588.1, county offices of education, school districts and community college districts shall not be required to participate in a risk pool. County offices of education, school districts and community college districts shall only be allowed to establish a contract with CalPERS to participate in a risk pool if the service retirement formula of the risk pool provides higher factors at all ages than the service retirement formula applicable to school members.

NOTE: Authority cited: Sections 20120, 20121 and 20840, Government Code. Reference: Section 20840, Government Code.

HISTORY

1. New section filed 9-23-2004; operative 9-23-2004 pursuant to Government Code section 11343.4 (Register 2004, No. 39).

§ 588.5. Risk Pools — Amortization of Side Funds.

The side fund shall be amortized at the actuarially assumed investment return. All investment gains and losses on the side fund that exceed or fall below the actuarially assumed investment return shall be attributed to the risk pool.

NOTE: Authority cited: Sections 20120, 20121 and 20840, Government Code. Reference: Section 20840, Government Code.

HISTORY

1. New section filed 9-23-2004; operative 9-23-2004 pursuant to Government Code section 11343.4 (Register 2004, No. 39).

§ 588.6. Risk Pools — Assignment to Risk Pools.

A rate plan participating in a risk pool shall be assigned to one of the risk pools based on the service retirement formula applicable to its active members.

NOTE: Authority cited: Sections 20120, 20121 and 20840, Government Code. Reference: Section 20840, Government Code.

HISTORY

1. New section filed 9-23-2004; operative 9-23-2004 pursuant to Government Code section 11343.4 (Register 2004, No. 39).

§ 588.7. Risk Pools — Leaving and Transferring Between Risk Pools.

Any contracting agency participating in a risk pool shall be allowed to transfer the assets and actuarial liabilities of its rate plan into another risk pool by contracting for a service retirement formula offered by the other risk pool. For this purpose, the assets to be transferred shall be the pro-rata share of the current pool's net assets (net of all side funds) plus the rate plan's remaining side fund, as determined by the actuary. Following the transfer to the new pool, a new side fund shall be established equal to the difference between the assets brought into the new pool and the product of the actuarial liabilities of the rate plan under the new service retirement formula and the net funded ratio of the new pool as determined by the actuary. A contracting agency shall not be allowed to terminate its participation in a risk pool, unless the agency's contract is terminated pursuant to Sections 20570, 20571, or 20572 of the Government Code. Upon termination of the contract, the affected members shall become part of the terminated agency pool pursuant to Section 20578 of the Government Code.

NOTE: Authority cited: Sections 20120, 20121 and 20840, Government Code. Reference: Section 20840, Government Code.

HISTORY

1. New section filed 9-23-2004; operative 9-23-2004 pursuant to Government Code section 11343.4 (Register 2004, No. 39).

§ 588.8. Risk Pools — Classification of Benefit Provisions.

The CalPERS Board shall separate the benefit provisions available to a contracting agency into various classifications. These classifications will be handled as follows:

(a) Class 1 benefits may vary by rate plan within each risk pool. Agencies contracting for a Class 1 benefit will be responsible for the past service liability associated with such benefit and will be required to pay a surcharge established by the actuary to cover the ongoing cost (normal cost) of the Class 1 benefit. Class 1 benefits shall be the optional benefits meeting the following criteria:

(i) Impact the ongoing cost (either total or employer normal cost) of the risk pool by more than 0.25% of payroll; or

(ii) The benefit is not available to all plans participating in the risk pool.

(b) Class 2 benefits may vary by rate plan within each risk pool. Agencies contracting for a Class 2 benefit will be required to pay the full one time cost of the benefit, as established by the actuary. Class 2 benefits shall be the optional benefits, other than Class 1 benefits, meeting the following criteria:

(i) No impact on the ongoing cost (normal cost) of the risk pool; and

(ii) Provide a one time increase in benefit with an identifiable increase in accrued liabilities.

(c) Class 3 benefits may vary by rate plan within each risk pool. However, the employer contribution rate will not vary within the risk pool due to the Class 3 benefits. Class 3 benefits shall be the optional benefits meeting the following criteria:

(i) Impact the ongoing (normal cost) of the risk pool by no more than 0.25% of payroll

NOTE: Authority cited: Sections 20120, 20121 and 20840, Government Code. Reference: Section 20840, Government Code.

HISTORY

1. New section filed 9–23–2004; operative 9–23–2004 pursuant to Government Code section 11343.4 (Register 2004, No. 39).

§ 588.9. Risk Pools — Merger of Risk Pools.

In the event that the number of contracting agencies participating in a risk pool is determined by the actuary to be too small to reduce the volatility in employer contribution rates caused by unexpected demographic events, the risk pool will be merged with another risk pool identified by the actuary.

NOTE: Authority cited: Sections 20120, 20121 and 20840, Government Code. Reference: Section 20840, Government Code.

HISTORY

1. New section filed 9–23–2004; operative 9–23–2004 pursuant to Government Code section 11343.4 (Register 2004, No. 39).

§ 588.10. Risk Pools — Superfunded Status.

For employers participating in a risk pool, the actuary shall determine on an annual basis whether or not the employer's rate plan is superfunded pursuant to Section 20816 of the Government Code. In determining whether the rate plan is superfunded, the actuary shall use assets equal to the pro–rata share of the current pool's net assets plus the plan's remaining side fund. Superfunded plans may cover its employees' normal member contributions using its employer assets. Such transaction will be tracked through the rate plan's individual side fund.

NOTE: Authority cited: Sections 20120, 20121 and 20840, Government Code. Reference: Section 20840, Government Code.

HISTORY

1. New section filed 9–23–2004; operative 9–23–2004 pursuant to Government Code section 11343.4 (Register 2004, No. 39).

Article 8. Replacement Benefits Plan

§ 589. Establishment and Status of Plan.

(a) Establishment.

(1) There is hereby established and adopted a retirement plan entitled the California Public Employees' Retirement System Replacement Benefits Plan (the "Plan") to restore the annual retirement benefits otherwise earned by Members of CalPERS but which are limited by the rules of Section 415 of the Internal Revenue Code of 1986, as amended ("Tax Code"). CalPERS is a tax qualified plan under Section 401(a) of the Tax Code and is a governmental plan as defined in Section 414(d) of the Tax Code.

(2) This Plan is established pursuant to the provisions of Section 401(m) of the Tax Code and Section 21757 of the Government Code. This Plan constitutes the regulations that implement Part 3.4 of the Government Code, as provided in Section 21760 thereof.

(3) The state, each school employer, and each contracting agency is deemed to have elected to contract with the Board of CalPERS for administration of this Plan, pursuant to Government Code Section 21761.

(b) Effective Date.

(1) This Plan shall be effective as of January 1, 1999, and benefits shall be payable from this Plan on and after that date.

(2) Benefits shall be paid to CalPERS Members with respect to periods beginning on and after the Effective Date for which their CalPERS benefits are limited by Section 415.

(3) In addition, benefits with respect to periods prior to the Effective Date and on and after January 1, 1993, shall be payable under this Plan as provided in Sections 589.2 and 589.3 below.

(c) "Portion of CalPERS" — This Plan shall be deemed to be a "portion" of CalPERS and each retirement plan which exists as a part of CalPERS solely to the extent required by, and within the meaning of, Section 415(m)(3) as in effect on January 1, 2000, and not for any other purpose.

(d) Purpose and Tax Status of this Plan — In accordance with Section 415(m), this Plan is solely for the purpose of providing to Members of CalPERS, and Other Recipients that part of the annual benefit otherwise earned under CalPERS that exceeds the limitations on benefits imposed by Section 415.

NOTE: Authority cited: Section 20120, 20121 and 21760, Government Code. Reference: Section 21757, Government Code.

HISTORY

1. New article 8 (sections 589–589.10) and section filed 1–25–2001; operative 1–25–2001 pursuant to Government Code section 11343.4(c). Submitted to OAL for printing only (Register 2001, No. 4).
2. Amendment of subsection (a)(3) filed 11–18–2002; operative 12–18–2002. Submitted to OAL for printing only pursuant to Government Code section 21760 (Register 2002, No. 47).

§ 589.1. Definitions.

(a) Plan Definitions — Terms used in this Plan shall have the meaning set out below:

(1) "Board" means the CalPERS Board of Administration.

(2) "CalPERS" means the California Public Employees' Retirement System.

(3) "Commencement Date" means the date of commencement of participation in this Plan as set out in Subsection 589.2(b) hereof.

(4) "Effective Date" means January 1, 1999.

(5) "Government Code" means the California Government Code.

(6) "HI Taxes" means federal hospital insurance taxes.

(7) "Member" means person who has qualified for membership in the California Public Employees Retirement System and on whose behalf an employer has become obligated to pay contributions to such System

(8) "OASDI" Taxes means federal old age, survivor and disability insurance taxes.

(9) "Other Recipient" means any recipient of benefits from CalPERS other than the Participant, such as a beneficiary, spouse, former spouse, eligible survivor, surviving parent, surviving child, or other recipient of benefits payable from CalPERS.

(10) "Participant" means a CalPERS Member who participates in this Plan pursuant to Section 589.2 hereof.

(11) "PERF" means the Public Employees' Retirement Fund as established under Government Code Section 20170.

(12) "Plan" means this California Public Employees' Retirement System Replacement Benefits Plan.

(13) "Plan Administrator" means the Board.

(14) "Plan Year" means the 12–month period beginning on July 1 and ending on June 30.

(15) "Replacement Benefit Custodial Fund" means the fund established pursuant to Government Code Section 21758, which is separate

and apart from the PERF and any other CalPERS retirement trust fund and which is established to collect, hold and disburse funds to provide benefits under the Plan.

(16) "Recommencement Date" means the date of recommencement of participation in this Plan as set out in Subsection 589.2(d) hereof.

(17) "Section 415" means Section 415 of the Tax Code.

(18) "Tax Code" means the Internal Revenue Code of 1986, as amended, and any rules and regulations issued thereunder.

(b) Other Definitions — Terms used but not defined herein which are used in and defined under the Government Code as that Code governs CalPERS shall be deemed to be a reference to the terms used in and defined in the Government Code, and shall be defined in exactly the same manner as they are defined therein unless otherwise specifically provided in this Plan.

NOTE: Authority cited: Section 20120, 20121 and 21760, Government Code. Reference: Section 21757, Government Code.

HISTORY

1. New section filed 1–25–2001; operative 1–25–2001 pursuant to Government Code section 11343.4(c). Submitted to OAL for printing only (Register 2001, No. 4).

§ 589.2. Participation.

(a) CalPERS Members With Benefits Limited by Section 415 — Participation in this Plan is limited solely to those CalPERS Members or Other Recipients whose benefits earned or payable under CalPERS are limited by Section 415 for periods on and after the Effective Date.

(b) Commencement of Participation — Participation in this Plan shall commence on the first date (on or after the Effective Date) with respect to which benefits payable to the Member from CalPERS are limited by Section 415. This date is the Commencement Date.

(c) Cessation of Participation — Participation in this Plan shall cease as of the first date for which benefits payable to the CalPERS Member or Other Recipient are no longer limited by Section 415.

(d) Re–commencement of Participation.

(1) If any Participant has ceased participation in this Plan but at a later date his or her CalPERS benefits payable are again limited by Section 415, he or she shall again commence participation as provided in Subsection 589.2(b) hereof and shall cease participation as provided in Subsection 589.2(c) hereof.

(2) If a Participant's CalPERS benefits stop, then he or she shall cease participation in this Plan and his or her benefits shall stop under this Plan. He or she shall again commence participation as provided in Subsection 589.2(b) hereof and shall cease participation as provided in Subsection 589.2(c) hereof.

(e) Other Recipients — Any Other Recipient of benefits from CalPERS shall receive benefits under this Plan as of the first date (on or after the Effective Date) with respect to which benefits payable to him or her from CalPERS are limited by Section 415. The Other Recipient's benefits payable under this Plan shall cease as of the first date for which his or her CalPERS benefit is no longer limited by Section 415.

(f) Limited Retroactive Participation — CalPERS Members or Other Recipients whose benefits payable under CalPERS were limited by Section 415 for periods beginning on and after January 1, 1993 and ending with the Effective Date, shall be Participants in this Plan solely for the purpose of paying to them benefits that were limited by Section 415 during that period and shall be Participants solely for the time period necessary or appropriate to complete such payment. This Participation may be in addition to the Participation otherwise provided for in this Section.

(g) No One Else Shall Receive Benefits — No one other than a person described in this Section shall receive any benefits under this Plan, except as required by domestic relations orders or applicable law.

NOTE: Authority cited: Section 20120, 20121 and 21760, Government Code. Reference: Section 21757, Government Code.

HISTORY

1. New section filed 1–25–2001; operative 1–25–2001 pursuant to Government Code section 11343.4(c). Submitted to OAL for printing only (Register 2001, No. 4).

§ 589.3. Retirement Benefits.

(a) Benefits Contingent on Funding — No benefits shall accrue under this Plan to any Participant or Other Recipient unless and until the state, the school employer, or the contracting agency, as appropriate, has paid to CalPERS the amount that CalPERS has invoiced the state, school employer, contracting agency or Participant for the benefits payable, as provided in Sections 589.4 and 589.5 hereof.

(b) Amount of Benefit — Initial Determination.

The benefit payable under this Plan shall be initially determined for each Participant at the Participant's Commencement Date under the following steps:

(1) Calculate the Participant's benefit payable under CalPERS at the time of the Commencement Date without regard to the limits of Section 415 and after taking into account the form of CalPERS benefit selected by the Participant.

(2) Determine the amount of the Participant's CalPERS benefits (if any) attributable to after tax Member contributions and attributable to rollover contributions at the Commencement Date after taking into account the form of CalPERS benefit selected by the Participant.

(3) Subtract the amount determined in (2) from the amount calculated under (1); this is the amount subject to the Section 415 limits and therefore subject to Section 415 testing.

(4) Determine the maximum benefits payable to the Participant from CalPERS under the then current benefit payment limits of Section 415, ignoring any benefits that may be attributable to after tax Member contributions or rollover Member contributions. This determination shall take into account the applicable dollar limits, and the form of benefit payment chosen. The limits may differ based on other factors such as whether the Participant qualifies for the special safety member limits under Section 415 and when he or she first became a CalPERS Member.

(5) Subtract the amount determined under (4) from the amount determined under (3). If the amount in (3) is greater than that in (4), the difference is the initial benefit payable under this Plan. If the amount in (4) is equal to or greater than the amount in (3), then no benefits are payable under this Plan.

(6) Section 415 establishes annual benefit limits and therefore, the amount of the initial benefit to be paid under this Plan that is determined under (4) is an annual benefit. For payment under this Plan, however, the amount of such initial benefit shall be converted to equal quarterly amounts.

(c) Amount of Benefit — Redeterminations.

(1) As of each January 1 following the Participant's Commencement Date or Recommencement Date (or the date of commencement or recommencement of benefits under this Plan for any Other Recipient), the Participant's, or Other Recipient's, benefit under this Plan shall be redetermined by following each of steps (1) through (6) of Subsection 589.3(b), but using the then current amounts determined by applying (i) cost of living adjustments and other changes (if any) to the benefits provided under CalPERS, and (ii) cost of living adjustments, and other changes (if any) to the maximum benefit limits established by Section 415.

(2) At the Plan Administrator's sole discretion, the amount of every Participant's and Other Recipient's benefits (on a uniform basis and not separately for any particular Participant or Other Recipient) may be redetermined at a date other than January 1 if there is a material change in the rules governing the maximum benefit limits established under Section 415 or a material change in CalPERS benefits, or for any other material reason at the Plan Administrator's sole discretion.

(d) Amount of Benefit — Recommencement of Participation — When a Participant or Other Recipient recommences participation in this Plan, a recalculation shall occur under Subsection 589.3(c) hereof, treating the first month for which benefits resume under this Plan as if it were a date of recalculation under Subsection 589.3(c). Any cost of living adjustments shall not apply to benefits payable under this section of the Plan until they otherwise would occur under the operation of this Plan and CalPERS.

(e) Amount of Benefit — Other Recipients.

Other Recipients shall be entitled to benefits under this Plan as follows:

(1) Other Recipients shall be entitled to benefits under this Plan only if they are entitled to benefits that are limited by Section 415 under CalPERS after the death of a CalPERS Member or upon legal separation or dissolution of a marriage of a Member.

(2) The benefit payable to an Other Recipient under this Plan shall be determined as if he or she were the Participant, substituting in the calculations under Subsections 589.3(b) or 589.3(c), as applicable, the amounts due to such Other Recipient for the amounts due to the Participant.

(f) Timing of Payments.

(1) The amount of benefit provided under this Plan shall be paid quarterly starting as of the first day of the last month of the first calendar quarter following the Commencement Date. At the Plan Administrator's sole discretion, payments may be made from this Plan more or less frequently than quarterly, (and this may be done on an individual Participant basis), provided that payments to a Participant or Recipient shall be made at least annually.

(2) A pro rata amount, smaller than the quarterly payment, shall be paid for part of a quarter when the period of payment begins after the first day of the quarter or ends before the last day of the quarter.

(g) Form of Benefit Paid — The benefit paid to a Participant or Other Recipient under this Plan shall be paid in the same form as benefits are paid to him or her under CalPERS, except that periodic benefits paid under this Plan shall be paid quarterly unless otherwise provided herein.

(h) Limited Retroactive Payments.

(1) The amounts that are payable to any Participant or Other Recipient covered by Subsection 589.2(f) above shall be determined as if the Effective Date for this Plan for the Participant or Other Recipient was the first date on and after January 1, 1993 on which benefits payable to him or her under CalPERS were limited by Section 415, and the last date for which benefits were so limited was December 31, 1998. All of the other provisions in this Section 589.3 (including but limited to Subsection 589.3(a)) shall apply to determine such payment, except as provided in this Subsection 589.3(h).

(2) Benefits payable under this Subsection 589.3(h) shall be paid as soon as reasonably practicable.

(3) Benefits payable under this Subsection 589.3(h) shall be paid, to the extent reasonably practicable, in a single sum.

(i) Determination Solely By Plan Administrator — The Plan Administrator shall have sole authority and discretion to determine the amount of benefits (if any) that are payable under this Section 589.3.

NOTE: Authority cited: Section 20120, 20121 and 21760, Government Code. Reference: Section 21757, Government Code.

HISTORY

1. New section filed 1–25–2001; operative 1–25–2001 pursuant to Government Code section 11343.4(c). Submitted to OAL for printing only (Register 2001, No. 4).
2. Amendment of subsection (a) filed 11–18–2002; operative 12–18–2002. Submitted to OAL for printing only pursuant to Government Code section 21760 (Register 2002, No. 47).

§ 589.4. Funding.

(a) Employer Contributions Required — The state, each applicable school employer, and each applicable contracting agency shall make contributions to this Plan in amounts to be fixed and determined by the Board. The Board shall have sole authority and discretion to determine the amount of contributions that must be paid to this Plan by the state, each applicable school employer, and each applicable contracting agency. The Board shall make such determination after receiving advice on such contributions from the Chief Actuary of CalPERS.

(b) Employer Contribution Amount.

(1) The amount of each employer's contributions to this Plan shall be equal to the amount of estimated benefits payable from this Plan for the applicable calendar year for applicable Participants and/or Other Recipients.

(2) The Board may require payment of additional contributions or other amounts owed to this Plan from one or more applicable employers during the applicable calendar year as is necessary to provide benefits under this Plan.

(c) Time and Manner of Employer Contributions — Employer contributions shall be made at the time and in the manner as is fixed by the Board.

(d) Excess Amounts — If, at the end of any calendar year, assets are held in the Replacement Benefit Custodial Fund that are in excess of what was required during the calendar year to pay benefits under the Plan, such excess shall be used only to pay Plan expenses.

(e) Source of Contributions — To the extent practicable and subject to the approval of the CalPERS Chief Actuary, contributions to this Plan shall be made from amounts that otherwise would have been contributed by the employer to CalPERS. Such contributions shall be deposited in the Replacement Benefit Custodial Fund. Under no circumstances shall any amount be transferred from the PERF to or for the use of this Plan.

(f) Invoice for Contributions.

(1) The Plan Administrator shall invoice each applicable contributing employer no later than the fifteenth day of January of each year.

(2) In addition, the Plan Administrator shall invoice each applicable contributing employer under this Plan as soon as is reasonably practicable in order to obtain the funds needed to pay benefits under this Plan for Members who become Participants after the beginning of the calendar year, and for other appropriate circumstances.

(3) The employer shall promptly pay to CalPERS the amount invoiced.

(4) No benefits shall accrue or be payable to any person under this Plan unless and until payment of the amount invoiced for such person is made by the applicable contributing employer.

(g) Replacement Benefit Custodial Fund.

(1) All contributions under this Plan shall be deposited in the Replacement Benefit Custodial Fund.

(2) The Plan Administrator shall establish, within the Replacement Benefit Custodial Fund, an individual account for each Participant or Other Recipient to hold contributions with respect to her or her benefit under this Plan, pursuant to Section 21758(e) of the Government Code. All benefits paid to such Participant and Other Recipient shall be paid from such accounts.

NOTE: Authority cited: Sections 20120, 20121 and 21760, Government Code. Reference: Section 21757, Government Code.

HISTORY

1. New section filed 1–25–2001; operative 1–25–2001 pursuant to Government Code section 11343.4(c). Submitted to OAL for printing only (Register 2001, No. 4).
2. Amendment of subsection (a) filed 11–18–2002; operative 12–18–2002. Submitted to OAL for printing only pursuant to Government Code section 21760 (Register 2002, No. 47).

§ 589.5. Taxes.

(a) Tax Withholding — The Plan Administrator shall have full authority to determine and withhold any and all taxes that are or may be due from all amounts contributed or paid under the Plan (including but not limited to income and payroll taxes), to pay them to the appropriate government agency, and to file and distribute necessary or appropriate tax reports and forms.

(b) Agent for Paying Taxes — The state, each affected school employer, and each affected contracting agency hereby designate the Plan Administrator as its agent for purposes of paying taxes and filing such forms and returns as are required by the Internal Revenue Service and any other tax agency with respect to benefits paid from this plan. The state, each affected school employer, and each affected contracting agency shall execute and file such forms and other documents as are deemed necessary or appropriate by the Plan Administrator in connection with this designation.

(c) Payment of OASDI and HI Taxes by Employers, Participants and Other Recipients.

(1) The state, applicable school employers, applicable contracting agencies, Participants and Other Recipients shall promptly pay to the Plan Administrator amounts equal to such OASDI and HI Taxes that the Plan Administrator determines are due from them with respect to benefits paid from this Plan. Amounts paid under this Subsection 589.5(c)(1) shall be held in a special tax escrow account until paid and shall not be held in the Replacement Benefit Custodial Fund.

(2) The Plan Administrator shall determine the amount of OASDI and HI taxes due with respect to any Participant or Other Recipient pursuant to applicable Treasury Regulations, and shall do the following:

(A) invoice the state, the school employer, or contracting agency, as appropriate, for the full amount of the employer taxes due on benefits payable with respect to applicable Participants and Other Recipients from this Plan,

(B) collect the employer OASDI and HI Taxes due from such employer prior to the payment of any benefits under this Plan to the Participant or Other Recipient,

C) collect the employee taxes due from the Participant or Other Recipient from benefits payable from this Plan prior to payment of any such benefits, and

(D) as agent of the state, school employer, or contracting agency, pay such taxes and file such forms and returns as directed by the Internal Revenue Service.

NOTE: Authority cited: Sections 20120, 20121 and 21760, Government Code. Reference: Section 21757, Government Code.

HISTORY

1. New section filed 1–25–2001; operative 1–25–2001 pursuant to Government Code section 11343.4(c). Submitted to OAL for printing only (Register 2001, No. 4).
2. Amendment of subsections (b), (c)(1), (c)(2)(A) and (c)(2)(D) filed 11–18–2002; operative 12–18–2002. Submitted to OAL for printing only pursuant to Government Code section 21760 (Register 2002, No. 47).

§ 589.6. Exemption from Process; Assignments Prohibited.

(a) Benefit Not Subject to Execution, Process or Assignment — The right of a person to any benefit or other right under this Plan and any money that is set aside to pay such benefits are not subject to execution or any process whatsoever except to the extent permitted by Section 704.110 of the Code of Civil Procedure, and are unassignable, except as specifically provided in this Plan.

(b) Marital Dissolution or Legal Separation.

(1) The provisions of Subsection 589.6(a) will not apply in the case of any property settlements upon marital dissolution or legal separation which are made in accordance with a domestic relations order (DRO) issued in accordance with state domestic relations law.

(2) If the community property is divided upon the marital dissolution or legal separation of a Member, then the provisions of Sections 21290 through 21298 of the Government Code shall apply to this Plan in the same manner as they apply to CalPERS.

NOTE: Authority cited: Sections 20120, 20121 and 21760, Government Code. Reference: Section 21757, Government Code.

HISTORY

1. New section filed 1–25–2001; operative 1–25–2001 pursuant to Government Code section 11343.4(c). Submitted to OAL for printing only (Register 2001, No. 4).

§ 589.7. Administration.

(a) Administration by the Board.

(1) The management and control of this Plan is vested in the Board.

(2) This Plan shall be administered by the Board in conformity with its powers and duties set forth in the Government Code commencing with Section 20000, including but not limited to all powers and duties set forth in Chapter 2 of Part 3 of the Government Code.

(3) For determining the administrative powers and responsibilities of the Board, the term "Replacement Benefit Custodial Fund" shall replace reference to the "Public Employees' Retirement Fund" in Article 5 of Chapter 2 of Part 3 of the Government Code. The Board has the exclusive control of the administration and investment of the Replacement Benefit Custodial Fund.

(b) Costs of Administration.

(1) The administrative costs of this Plan shall be paid from (i) earnings on assets of the Replacement Benefit Custodial Fund, (ii) funds credited to accounts of Participants or Other Recipients under this Plan, (iii) forfeitures of amounts that have been credited to such accounts but which are not paid because of death of the Participant or Other Recipient, and (iv) amounts described in Subsection 589.4(d) above.

(2) Administrative costs of this Plan shall not be paid from the PERF.

NOTE: Authority cited: Sections 20120, 20121 and 21760, Government Code. Reference: Section 21757, Government Code.

HISTORY

1. New section filed 1–25–2001; operative 1–25–2001 pursuant to Government Code section 11343.4(c). Submitted to OAL for printing only (Register 2001, No. 4).

§ 589.8. Source of Benefits.

(a) Replacement Benefit Custodial Fund — All benefits payable under this Plan shall be paid solely from the Replacement Benefits Custodial Fund.

(b) No Employee Deferrals — No employee contributions or deferrals shall be made or allowed under the Plan at any time. In accordance with Section 415(m), no election to defer compensation under this Plan shall be provided, at any time or in any manner, to any person.

(c) No Use of CalPERS Assets — Except as specifically allowed by governing federal and state law (including but not limited to governing federal and state tax laws), assets used to provide benefits under this Plan shall not be commingled with the monies of the PERF or any other CalPERS retirement trust fund or any other qualified plans, nor shall this Plan ever receive or use any assets of the PERF.

NOTE: Authority cited: Sections 20120, 20121 and 21760, Government Code. Reference: Section 21757, Government Code.

HISTORY

1. New section filed 1–25–2001; operative 1–25–2001 pursuant to Government Code section 11343.4(c). Submitted to OAL for printing only (Register 2001, No. 4).

§ 589.9. Miscellaneous.

(a) Applicable Law — This Plan shall be governed by the laws of the State of California and applicable federal law.

(b) No Employment Rights — Nothing in this Plan shall be construed as giving to a Participant any right to be retained in the employment of the state, the school employer, or any contracting agency.

(c) Unclaimed Benefits and Accumulations — In any situation where benefits are payable under this Plan, a reasonable search, including mailing of a registered letter to the last known address, shall be made to ascertain the whereabouts of the eligible Participant or other Recipient.

If the person or persons entitled thereafter come forward and request payment and establish such entitlement, the amounts then due, including retroactive payments from the Commencement Date, shall be paid accordingly.

(d) Benefit Limits — Nothing in this Plan shall be construed as creating an entitlement to any benefits greater than what is otherwise provided under the sections of the Government Code that govern the benefits provided by CalPERS determined without regard to the limits of Section 415.

NOTE: Authority cited: Sections 20120, 20121 and 21760, Government Code. Reference: Section 21757, Government Code.

HISTORY

1. New section filed 1–25–2001; operative 1–25–2001 pursuant to Government Code section 11343.4(c). Submitted to OAL for printing only (Register 2001, No. 4).
2. Amendment of subsection (b) filed 11–18–2002; operative 12–18–2002. Submitted to OAL for printing only pursuant to Government Code section 21760 (Register 2002, No. 47).

§ 589.10. Amendment or Termination of Plan.

(a) Right to Amend Plan — Notwithstanding any other provision of this Plan, the Board has the right to amend this Plan at any time and at any manner for any reason whatsoever. This right to amend includes, but is

not limited to, the right to amend the Plan to reduce or eliminate any or all benefits under the Plan for any or all persons who may be Participants and/or Other Recipients or otherwise may be entitled to benefits under the Plan. Benefits may be reduced or eliminated for any or all persons (including Participants and/or other Recipients) even if they are then entitled to or are receiving benefits under the Plan.

(b) Right to Terminate Plan — Notwithstanding any other provision of this Plan, the Board has the right to terminate this Plan at any time and for any reason whatsoever. This right to terminate the Plan includes, but is not limited to, the right to terminate any or all benefits under the Plan for any or all persons who may be Participants and/or Other Recipients or otherwise may be entitled to benefits under the Plan. Benefits may be terminated for any or all persons (including Participants and/or other Recipients) even if they are then entitled to or are receiving benefits under the Plan.

(c) Vested Rights — Nothing in this Section 589.10 shall be construed as affecting any vested rights that a Participant or Other Recipient may otherwise have under California law.

(d) Preservation of Tax Status — This Plan shall not in any way jeopardize the tax qualified status of CalPERS. To maintain this qualified status, the Board shall take all necessary or appropriate action, including but not limited to amending this Plan and any rules governing this Plan, solely for the purpose of complying with applicable federal tax laws and regulations.

NOTE: Authority cited: Sections 20120, 20121 and 21760, Government Code. Reference: Section 21757, Government Code.

HISTORY

1. New section filed 1–25–2001; operative 1–25–2001 pursuant to Government Code section 11343.4(c). Submitted to OAL for printing only (Register 2001, No. 4).

Subchapter 2. Social Security (OASDHI) Regulations

Article 1. General

§ 590. Location of Offices.

The office of the board is located at 400 P Street, Sacramento, California. Correspondence should be addressed to the Executive Officer, Public Employees' Retirement System, P.O. Box 942709, Sacramento, California 94229–2709.

NOTE: Authority cited for Subchapter 2 (§§ 590 through 598.1, 599 and 599.1): Section 22500, Government Code.

[The next page is 53.]

HISTORY

1. New Subchapter 2 (§§ 590 through 598.1, 599 and 599.1) filed 7–6–55, as an emergency; effective upon filing (Register 55, No. 10). (For former Sections 590 through 599, designated as Chapter 3, issued by Director of Finance, see Register 55, No. 6. Repealer filed 7–22–55 as an emergency; effective upon filing.)
2. Amendment filed 4–23–57 as an emergency; effective upon filing (Register 57, No. 7).
3. Amendment filed 12–9–64; effective thirtieth day thereafter (Register 64, No. 24).
4. Amendment filed 4–9–68; effective thirtieth day thereafter (Register 68, No. 15).
5. Change without regulatory effect filed 4–18–88; operative 5–18–88 (Register 88, No. 18).

§ 591. Definitions.

For the purpose of the regulations contained in this chapter, the term "board" means the Board of Administration of the Public Employees' Retirement System; the term "code" means the California Administrative Code; the term "register" means the California Administrative Register; the term "supervisor" means the agency or individual designated by the Governor to supervise the conduct of divisions and referendums as provided by Part 4, Division 5 of Title 2 of the Government Code; the term "member" with respect to any retirement system shall include in addition to members of the system any nonmember in a position in which he may elect membership for purposes of division of the system; and the term "federal system" means the Old–Age, Survivors, Disability, and Health Insurance provisions of the Social Security Act.

NOTE: Additional authority cited: Section 22151, Government Code.

HISTORY

1. Amendment filed 6–22–59 as an emergency; effective upon filing (Register 59, No. 10).
2. Certificate of Compliance—Section 11422.1, Government Code; filed 8–20–59 (Register 59, No. 14).
3. Amendment filed 4–9–68; effective thirtieth day thereafter (Register 68, No. 15).

§ 592. Tenses, Gender and Number.

For the purpose of the regulations contained in this chapter, the present tense includes the past and future tenses, and the future the present; the masculine gender includes the feminine, and the feminine, the masculine; and the singular includes the plural, and the plural, the singular.

Article 2. Referendum Procedures for Local Public Agencies

§ 593. Adoption of Resolution.

Any public agency, as defined in Sections 22009, et seq., of the Government Code, except the State, desiring to hold a referendum, shall first adopt a resolution or ordinance to do so. Such resolution or ordinance shall specify who are the employees eligible to vote in such referendum, and shall designate by name and title the individual who will conduct the referendum. Such resolution or ordinance shall establish the effective date upon and after which services performed for such public agency shall be covered under the agreement under the provisions of Section 218 of the Social Security Act. Such resolution or ordinance shall include a request to the board for authorization to hold such referendum.

NOTE: Authority cited: Section 20120, Government Code. Reference: Section 22300, Government Code.

HISTORY

1. Amendment filed 12–9–64; effective thirtieth day thereafter (Register 64, No. 24).
2. Amendment filed 4–9–68; effective thirtieth day thereafter (Register 68, No. 15).
3. Amendment filed 8–5–76; effective thirtieth day thereafter (Register 76, No. 32).

§ 594. Date of Referendum.

Upon receipt of the board's authorization to hold a referendum, the public agency shall set a date upon which its eligible employees shall vote in such referendum. This date may be set by the individual who will conduct the referendum, on behalf of such public agency.

§ 595. Submission of Proposed Notice and Procedure.

The public agency shall prepare a notice of referendum, specifying, among other matters, the time and place for voting. Such notice, together with a proposed plan of procedure in the conduct of such referendum, shall be submitted to the supervisor for approval.

§ 596. Notice of Referendum.

After approval by the supervisor of the notice and plan of referendum, the public agency shall give such notice to all employees eligible to vote in the referendum. Notice of referendum shall be given by either personal service or first class mail, and in addition thereto, by posting such notice on all bulletin boards maintained by such agency to give notices to employees.

§ 597. Referendum Ballots.

Ballots shall be furnished to all employees eligible to vote in such referendum, and only to such employees. The ballots so furnished shall contain a statement of the question to be voted upon in the referendum. Such question shall be in the words and figures contained in the notice of referendum hereinabove mentioned. Provision shall be made for an indication by the voter of a vote in either the affirmative or negative. The ballots shall be counted by or under the supervision of the individual who conducts the referendum.

§ 598. Certification of Referendum.

(a) Upon completion thereof, the individual who conducts the referendum shall, if such be the facts, certify to the supervisor that:

(1) A referendum by secret written ballot was held on question of whether service in positions covered by the retirement system of the public agency should be excluded from or included under the agreement under the provisions of Section 218 of Title II of the Social Security Act;

(2) An opportunity to vote in such referendum was given (and was limited) to eligible employees;

(3) Not less than 90 days' notice of such referendum was given to all such employees;

(4) Such referendum was conducted by him;

(5) A majority of the eligible employees voted in favor of including service in such positions under an agreement under said Section 218;

(6) That with respect to such referendum the conditions specified in Section 218(d) of the Social Security Act have been met, and that the protection afforded employees in positions covered by the retirement system as to which such referendum has been had, as well as those receiving periodic benefits under such retirement system, will not be impaired as a result of making an agreement, bringing such employees under social security in accordance with the declared policy of the Congress set forth in Section 218(d) of the Social Security Act.

(b) Accompanying such certification, the individual who conducted the referendum shall forward to the supervisor:

(1) His affidavit of service and posting of the notice of referendum;

(2) A certified copy of the notice of referendum;

(3) All ballots cast in the referendum.

(c) Certification to Governor. The supervisor shall thereupon certify to the Governor or such other state official designated by the Governor that such referendum has been conducted and completed in full accordance with law and these regulations.

(d) Destruction of Referendum Ballots. The ballots cast in the referendum shall be forwarded by the supervisor to the office of the board, where such ballots shall be retained for a period of 30 days following acceptance by the Department of Health and Human Services of the modification including in coverage under the federal–state agreement the retirement sys-

tem coverage group with respect to which the referendum was held. At the expiration of the said 30–day period, the ballots shall be destroyed.

NOTE: Authority cited: Section 22500, Government Code. Reference: Section 22300, Government Code.

HISTORY

1. New subsection (d) filed 6–29–60; effective thirtieth day thereafter (Register 60, No. 15).
2. Amendment filed 7–18–61 as an emergency; effective on filing (Register 61, No. 14).
3. Certificate of Compliance—Sec. 11422.1, Gov. Code, filed 10–17–61 (Register 61, No. 21).
4. Amendment of subsection (d) filed 2–11–81; effective thirtieth day thereafter (Register 81, No. 7).

§ 598.1. Ratification.

All action taken by any public agency in accordance with law and these regulations, but taken before the formal adoption hereof, is hereby ratified, approved and confirmed.

§ 598.50. Authorization for Division; Supervision by Referendum Supervisor.

NOTE: Authority cited for Article 2.5: Sections 22151 and 22500, Government Code.

HISTORY

1. New Article 2.5 (§§ 598.50 through 598.54) filed 10–14–57; effective thirtieth day thereafter (Register 57, No. 18).
2. Repealer of Article 2.5 (§§ 598.50 through 598.54) filed 7–18–61 as an emergency; effective upon filing (Register 61, No. 14).
3. Certificate of Compliance—Sec. 11422.1, Gov. Code, filed 10–17–61 (Register 61, No. 21).

Article 3. Division of Retirement Systems

§ 598.60. Authorization for Division.

The governing body of any public agency, as defined in Sections 22009, et seq., of the Government Code, except the State, may divide a retirement system established by it into two parts in accordance with these rules, one part composed of positions of members of such system who desire coverage under the Federal System, and the other composed of positions of members who do not desire such coverage.

NOTE: Authority cited for new Article 3 (Sections 598.60 through 598.69, inclusive): Sections 22151 and 22500, Government Code. Additional authority cited: Section 20120, Government Code. Reference: Section 22150, Government Code.

HISTORY

1. New Article 3 (Sections 598.60 through 598.69) filed 6–22–59 as an emergency; effective upon filing (Register 59, No. 10).

(For former Article 3 (Sections 599 through 599.3), see Registers 55, No. 16, and 57, No. 18. Repealer filed 6–22–59 as an emergency; designated effective on filing.)

2. Certificate of Compliance—Section 11422.1, Government Code; filed 8–20–59 (Register 59, No. 14).
3. Amendment filed 4–9–68; effective thirtieth day thereafter (Register 68, No. 15).
4. Amendment filed 8–5–76; effective thirtieth day thereafter (Register 76, No. 32).

§ 598.61. Division Election.

HISTORY

1. Repealer filed 6–26–63 as an emergency; effective upon filing (Register 63, No. 11).
2. Certificate of Compliance—Section 11422.1, Government Code, filed 8–21–63 (Register 63, No. 14).

§ 598.62. Resolution Requesting Division.

Authorization shall be requested by a resolution adopted by the governing body or such other officer or body as may be authorized or directed by law to divide the system. The resolution shall include: (1) a designation of the members, if any, who are excluded from participation in the division; (2) a designation by name and title of the local division officer who will conduct the division; and (3) the effective date on and after which services of members will be included in the federal system. The resolution shall provide for reimbursement of estimated costs incurred by the State in connection with the division and shall fix the date for the division or authorize the local division officer to fix such date. Two copies of the resolution properly certified shall be filed with the board.

NOTE: Additional authority cited: Section 22150, Government Code.

HISTORY

1. Amendment filed 6–26–63 as an emergency; effective upon filing (Register 63, No. 11).
2. Certificate of Compliance—Section 11422.1, Government Code, filed 8–21–63 (Register 63, No. 14).

§ 598.63. Executive Officer's Authorization.

The Executive Officer, upon the filing of a resolution complying with these regulations, shall authorize a division of the retirement system and shall designate the State division supervisor to supervise the conduct of the division.

NOTE: Additional authority cited: Section 22150, Government Code.

HISTORY

1. Amendment filed 6–26–63 as an emergency; effective upon filing (Register 63, No. 11).
2. Certificate of Compliance—Section 11422.1, Government Code, filed 8–21–63 (Register 63, No. 14).

§ 598.64. Notice of Division.

The local division officer shall, upon issuance of the authorization, prepare a notice of the division which shall contain among other matters the date of the division and an explanation of the modification if any to be made in the retirement system as it applies to public agency employees. He shall submit such notice together with the proposed plan of procedure to the state division supervisor for approval. The approved notice shall be given not less than 90 days prior to the date set for the division to all persons who are eligible members of the system. Such notice shall also be given to each person who becomes an eligible member after the notice date to and including the date fixed for the division. Notice shall be given by personal delivery or by first–class mail and must be posted on all bulletin boards maintained by the agency to give notices to employees.

§ 598.65. Division Election Form.

Each member of the retirement system on the division date shall be supplied with a division election form devised or approved by the executive officer, Public Employees' Retirement System, containing provisions for an election by the member whether he desires to be or not to be included in the part of the system to be covered under the Federal System. If supplied by mail, the form shall be sent by first–class mail. Failure to execute and return a form indicating an election to be included in that part of the system to be covered under the federal system on the division date or within 10 days or such longer period thereafter as may be prescribed by the executive officer, shall be deemed an election not to be included in such part, unless the board finds that the failure was due to circumstances beyond the control of the member.

HISTORY

1. Amendment filed 4–9–68; effective thirtieth day thereafter (Register 68, No. 15).
2. Amendment filed 11–21–75 as an emergency; effective upon filing (Register 75, No. 47).
3. Certificate of Compliance filed 3–2–76 (Register 76, No. 10).

§ 598.66. Certificate of Conduct of Division.

Upon completion of division procedures in compliance with these rules, the local division officer shall so certify to the state division supervisor. He shall forward to the supervisor a certified list of the members eligible to participate in the division and all election forms properly executed and returned by eligible members in the division.

§ 598.67. Division Supervisor's Certificate.

The supervisor of the division, upon receipt thereof and upon finding that the division was conducted in compliance with applicable law and these rules, shall approve the list and election forms and file the same in the office of the board where they shall be maintained as a permanent record. He shall thereupon certify to the Governor or to any such other State

official designated by the Governor to make the certification required in Section 218(d)(6) of the Federal Social Security Act with respect to the division that:

(a) An opportunity to vote by written ballot on the question whether they wish to be covered under the federal system was given to all individuals who were members of the system at the time the vote was held.

(b) Not less than 90 days' notice was given to all individuals who were members of such system on the date the notice was issued.

(c) The vote was conducted under the supervision of the division supervisor.

(d) All written election forms returned and approved by the supervisor, together with a list of the members eligible to participate in the division, have been filed in the office of the board.

NOTE: Additional authority cited: Section 22150, Government Code.

HISTORY

1. Amendment filed 6–26–63 as an emergency; effective upon filing (Register 63, No. 11).
2. Certificate of Compliance—Section 11422.1, Government Code, filed 8–21–63 (Register 63, No. 14).

§ 598.68. Application and Agreement.

When the division supervisor's certificates have been filed, the governing body of the public agency may submit an application and agreement to the board for coverage under the federal system of the members of the system established by these procedures composed of the members electing such coverage.

§ 598.69. Application of Article.

HISTORY

1. Repealer filed 6–26–63 as an emergency; effective upon filing (Register 63, No. 11).
2. Certificate of Compliance—Section 11422.1, Government Code, filed 8–21–63 (Register 63, No. 14).

§ 598.75. Authorization for Division.

NOTE: Authority cited for Article 4: Sections 22151 and 22500, Government Code.

HISTORY

1. Repealer of Article 4 (Sections 598.75 through 598.80) filed 12–9–64; effective thirtieth day thereafter (Register 64, No. 24). For prior history, see Register 61, No. 21.

§ 598.81. Authorization for Division.

NOTE: Authority cited for Article 4.5 (Sections 598.81 through 598.86), Sections 22151, 22156, 22500, Government Code. Additional authority cited: Section 20120, Government Code.

HISTORY

1. New Article 4.5 (Sections 598.81 through 598.86) filed 1–4–72 as an emergency; effective upon filing (Register 72, No. 2).
2. Certificate of Compliance filed 5–2–72 (Register 72, No. 19).
3. Repealer of Article 4.5 (Sections 598.81 through 598.86) filed 8–5–76; effective thirtieth day thereafter (Register 76, No. 32).

§ 598.90. Resolution of Intention.

NOTE: Authority cited for new Article 5 (Sections 598.90 through 598.93): Sections 22151 and 22500, Government Code.

HISTORY

1. New Article 5 (Sections 598.90 through 598.93) filed 7–30–59 as an emergency; effective upon filing (Register 59, No. 13). Certificate of Compliance filed 8–20–59.
2. Repealer of Article 5 (§§ 598.90–598.93) filed 7–18–61 as an emergency; effective on filing (Register 61, No. 14).
3. Certificate of Compliance—Sec. 11422.1, Gov. Code, filed 10–17–61 (Register 61, No. 21).

Article 6. Transfer of Members of Divided System

§ 599. Authorization for Transfer.

Any public agency which has divided a retirement system may request a transfer of members from the system composed of positions of members not desiring coverage under the federal system to the system composed of members desiring such coverage pursuant to this article. Such request must include both the members of the system who elected not to be covered and those nonmembers having an option to be members, who either elected not to be covered or who had no right of election under the law at the time of the division.

NOTE: Authority cited for Article 6 (Sections 599 through 599.5), Sections 22155 and 22500, Government Code. Additional authority cited: Section 22155.5, Government Code.

HISTORY

1. New Article 6 (Sections 599 through 599.5) filed 8–19–59 as an emergency; effective upon filing (Register 59, No. 14).
2. Certificate of Compliance—Section 11422.1, Gov. Code, for Article 6 (Sections 599 through 599.5) filed 10–13–59 (Register 59, No. 18).
3. Amendment filed 2–14–62; effective thirtieth day thereafter (Register 62, No. 3).

§ 599.1. Resolution Requesting Transfer—Contents.

The governing body of the public agency shall adopt and file with the board a resolution requesting the Board of Administration to execute a modification to the federal–state agreement to accomplish such transfer. The resolution shall specify a date before which members desiring to transfer must file their written requests with the State.

§ 599.2. Resolution Requesting Transfer—Time for Filing.

The resolution of the governing body must be filed before the first day of the twenty–fourth month following the execution by the appropriate federal official of the modification including the employees of the agency in the Federal System, or December 1, 1969, whichever is later, and may not specify a date for filing requests earlier than 60 days following execution of such modification, or 15 days following the filing of the resolution, whichever is later.

HISTORY

1. Amendment filed 10–17–61; effective thirtieth day thereafter (Register 61, No. 21).
2. Amendment filed 9–8–65 as an emergency; effective upon filing (Register 65, No. 17).
3. Certificate of Compliance—Sec. 11422.1, Gov. Code, filed 10–22–65 (Register 65, No. 20).
4. Amendment filed 4–9–68; effective thirtieth day thereafter (Register 68, No. 15).

§ 599.3. Notice of Right to Transfer.

The governing body shall give or cause to be given, on or before the filing of the resolution, notice to eligible members of the right to request a transfer and of the date by which such requests must be filed in the office of the board and shall make available to such members forms devised or approved by the executive officer upon which such requests may be filed.

§ 599.4. Member Request for Transfer.

Any member of the part of a divided retirement system composed of positions of members not desiring coverage with respect to which a resolution has been filed in accordance with this article may file a written request with the Board of Administration that his position be transferred to the part of the system composed of members desiring coverage. Such request shall be on a form devised for the purpose and approved by the executive officer; provided, however, that the executive officer shall accept the filing of any writing signed by the member which clearly states his intention to transfer. A member's request for transfer must be received in the office of the board on or before the date specified in the resolution for such filing. Requests duly filed with the board shall be maintained as a permanent record. The executive officer shall provide the agency with the names of the persons requesting transfer.

§ 599.5. Modification Providing for Transfer.

Upon the filing of a resolution in accordance with this article and expiration of the period for filing of member requests, as fixed by the resolution, the executive officer or, in his absence, the assistant executive officer, shall execute on behalf of the board and deliver to the Secretary of Health and Human Services, a modification to the agreement to include members so requesting in the federal system.

NOTE: Authority cited: Section 22500, Government Code. Reference: Section 22155, Government Code.

HISTORY

1. Amendment filed 2–11–81; effective thirtieth day thereafter (Register 81, No. 7).

§ 599.6. Transfer of School Members.

HISTORY

1. New section filed 7–18–61 as an emergency; effective on filing (Register 61, No. 14).
2. Certificate of Compliance—Sec. 11422.1, Gov. Code, filed 10–17–61 (Register 61, No. 21).
3. Amendment filed 8–16–66 as an emergency; effective upon filing (Register 66, No. 27).
4. Certificate of Compliance—Section 11422.1, Government Code, filed 10–26–66 (Register 66, No. 37).
5. Repealer filed 4–9–68; effective thirtieth day thereafter (Register 68, No. 15).

§ 599.7. Transfer of State Members.

HISTORY

1. New section filed 9–8–65 as an emergency; effective upon filing (Register 65, No. 17).
2. Certificate of Compliance—Sec. 11422.1, Gov. Code, filed 10–22–65 (Register 65, No. 20).
3. Repealer filed 4–9–68; effective thirtieth day thereafter (Register 68, No. 15).

Article 7. Termination Procedures for Local Public Agencies

§ 599.50. Adoption of Resolution or Ordinance.

NOTE: Authority cited: Section 22310, Government Code. Additional authority cited: Section 20120, Government Code. Reference: Section 22300, Government Code.

HISTORY

1. New Article 7 (Sections 599.50 through 599.54) filed 8–15–67; effective thirtieth day thereafter (Register 67, No. 33).
2. Amendment filed 8–5–76; effective thirtieth day thereafter (Register 76, No. 32).
3. Change without regulatory effect repealing section pursuant to 1 CAC section 100 (Register 86, No. 52).

§ 599.51. Provisions of Termination Resolution or Ordinance.

NOTE: Authority cited: Section 20120, Government Code. Reference: Section 218(g)(1), Social Security Act (PL 95–216, 1977).

HISTORY

1. Amendment filed 5–24–78; effective thirtieth day thereafter (Register 78, No. 21).
2. Change without regulatory effect repealing section pursuant to 1 CAC section 100 (Register 86, No. 52).

§ 599.52. Notification of Federal Government.

NOTE: Authority cited: Section 22500, Government Code. Reference: Section 22310, Government Code.

HISTORY

1. Amendment filed 2–11–81; effective thirtieth day thereafter (Register 81, No. 7).
2. Change without regulatory effect repealing section pursuant to 1 CAC section 100 (Register 86, No. 52).

§ 599.53. Cancellation of Termination Procedures.

NOTE: Authority cited: Section 22500, Government Code. Reference: Section 22310, Government Code.

HISTORY

1. Amendment filed 2–11–81; effective thirtieth day thereafter (Register 81, No. 7).
2. Change without regulatory effect repealing section pursuant to 1 CAC section 100 (Register 86, No. 52).

§ 599.54. Audit of Records of Terminating Agency.

HISTORY

1. Change without regulatory effect repealing section pursuant to 1 CAC section 100 (Register 86, No. 52).

§ 599.55. Extension of Termination Procedures.

NOTE: Authority cited: Section 22500, Government Code. Reference: Section 22310, Government Code.

HISTORY

1. New section filed 7–7–77; effective thirtieth day thereafter (Register 77, No. 28).
2. Amendment filed 2–11–81; effective thirtieth day thereafter (Register 81, No. 7).
3. Change without regulatory effect repealing section pursuant to 1 CAC section 100 (Register 86, No. 52).

Subchapter 3. Public Employees' Medical and Hospital Care Act Regulations

Article 1. Definitions, Coverage, Enrollment, Conversion, Minimum Standards, Alternative Benefit Plans, Contributions, Contingency Reserve Fund, Contracting Agency Participation and Medicare Part B

§ 599.500. Definitions.

For the purposes of this subchapter:

(a) Terms used in this subchapter that are defined by the Public Employees' Medical and Hospital Care Act (Title 2, Division 5, Part 5 (commencing with Section 22750) of the Government Code) shall have the meanings therein set forth.

(b) "Employing office" means any office of the state or contracting agency to which jurisdiction and responsibility for health benefits action for the employee concerned have been delegated. For annuitants, whether or not the annuitant is also an employee, the Health Benefits Division of the Public Employees' Retirement System is the employing office.

(c) "Payroll office" means either the office of the State Controller for agencies participating under the Uniform Payroll System, or the employing office for agencies not participating under the Uniform Payroll System, irrespective of whether or not salary warrants are issued by the State Controller.

(d) "Time." Whenever in this subchapter a time is stated in which an act is to be done, the time is computed by excluding the first day and including the last day. If the last day is a holiday, it is also excluded.

(e) "Annuity period" means the period for which a single installment of a retirement allowance or annuity is customarily paid for annuitants.

(f) "Enroll" means to file with the employing office a properly completed Health Benefits Plan Enrollment Form electing to be enrolled in a health benefits plan.

(g) "Enrolled" means to be enrolled in a health benefits plan approved by the Board under this subchapter.

(h) "Register not to enroll" means to file with the employing office a properly completed Health Benefits Plan Enrollment Form electing not to be enrolled in a health benefits plan.

(i) "Cancellation" is the act, by an enrolled employee or annuitant who is eligible to continue enrollment, of filing a Health Benefits Plan Enrollment Form, terminating enrollment in a health benefits plan.

(j) "Administrative action" is the completion or approval, by the Health Benefits Division, of a Health Benefits Plan Enrollment Form terminating or changing the enrollment of an employee, annuitant, or family member in accordance with the provisions of this subchapter.

(k) "Eligible" means eligible under the law and this subchapter to be enrolled.

(*l*) "Retirement System" means the Public Employees' Retirement System, the State Teachers' Retirement System, the Legislators' Retirement System, or the Judges' Retirement System, as the case may be, under which a retired person has acquired the status of "annuitant."

(m) Tenses and Number. The present tense includes the past and future, and the future the present; the singular includes the plural and the plural the singular.

(n) A child attains the status of "family member" at birth. In addition to "family member," as defined in Section 22775, Government Code, "family member" includes any unmarried child who is economically dependent upon the employee or annuitant, when there exists a parent–child relationship with the employee or annuitant. He or she ceases to be a "family member" upon marriage or attainment of age 23, whichever first occurs; except that an unmarried child who at the time of attaining age 23 is incapable of self–support because of physical or mental disability which existed continuously from a date prior to attainment of age 23 continues in family member status until termination of such incapacity.

(o) Meanings of terms related to Medicare are as follows:

"Medicare" means the Health Insurance For The Aged provided under Title XVIII of the Social Security Act; "Part A" means Hospital Insurance as defined in Title XVIII of the Social Security Act; and "Part B" means Medical Insurance as defined in Title XVIII of the Social Security Act.

(p) "Supplemental Plan" means a health benefits plan providing supplemental benefits for persons enrolled under Medicare Parts A and B.

(q) "Health benefits plan" or "plan" means a health benefits plan contracted for or approved by the Board pursuant to Sections 22793, 22850 and 22853, Government Code.

(r) "Conversion plan" means a nongroup contract offered by the carrier as its standard individual membership plan.

(s) "Control Period" means a period from January 1 through June 30 or July 1 through December 31.

(t) "Alternative benefit plan" means a health benefits plan approved, or contracted for, by the Board exclusively for employees or annuitants of contracting agencies pursuant to Section 22850(f)(2) of the Government Code.

NOTE: Authority cited: Sections 22794, 22796, 22800, 22830, 22831, 22846(a) and 22860, Government Code. Reference: Sections 22750–22944, Government Code.

HISTORY

1. Amendment filed 6–15–79; designated effective 8–1–79 (Register 79, No. 24). For prior history, see Register 74, No. 36.
2. Amendment filed 6–27–80; designated effective 8–1–80 (Register 80, No. 26).
3. Amendment of subsections (j) and (o)–(s) filed 6–9–86; effective thirtieth day thereafter (Register 86, No. 24).
4. New subsection (t) filed 4–13–2004 as an emergency; operative 4–13–2004 (Register 2004, No. 16). A Certificate of Compliance must be transmitted to OAL by 8–11–2004 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 4–13–2004 order transmitted to OAL 8–3–2004 and filed 9–15–2004 (Register 2004, No. 38).
6. Change without regulatory effect amending subsections (a), (n), (q) and (t) and amending NOTE filed 10–31–2006 pursuant to section 100, title 1, California Code of Regulations (Register 2006, No. 44).
7. Amendment of subchapter heading, new article 1 heading and amendment of first paragraph and subsection (a) filed 1–26–2007; operative 1–26–2007 pursuant to Government Code section 11343.4 (Register 2007, No. 4).

§ 599.501. Coverage.

(a) Each employee or annuitant other than those excluded by subsections (b) or (c) below, is eligible to be enrolled in a health benefits plan at the times and under the conditions prescribed in this subchapter, provided however that no person shall be enrolled in a supplemental plan who at the time of enrollment is not also enrolled under Part A and Part B of Medicare. An eligible employee or annuitant enrolled in both Parts A and B of Medicare, or who has a family member who is so enrolled, may be enrolled in a basic plan contracted for by the Board with respect to persons not enrolled in Parts A and B, and in a supplemental plan provided by the same carrier with respect to all persons enrolled in Parts A and B.

(b) Employees in the following groups are not eligible:

(1) Employees serving under:

(A) Intermittent appointments except where employment is on a permanent basis.

(B) Appointments to positions for which contributions are made by the employer to health and welfare programs providing prepaid hospital and medical care in accordance with Sections 14876 and 18853.5 of the Government Code, or Section 1705.5 of the Harbors and Navigation Code, or other similar provisions; or appointments to positions for which salary payment is made in lieu of payment to health and welfare programs providing prepaid hospital and medical care; or

(C) Appointments to positions not exceeding six months duration unless the employee is enrolled prior to beginning service under such appointment or unless the appointment is in lieu of a permanent appointment pending establishment of and certification from a list from which the position may be filled.

(2) Inmates of institutions who are allowed compensation for such services as they are able to perform.

(3) Persons employed as student assistants and graduate assistants and as student aids in special schools in the State Department of Education and Vocational Rehabilitation, and the public schools of the State.

(4) Blind persons and other physically handicapped persons employed by the California Industries for the Blind, or in opportunity centers for the blind by the Department of Education who are not civil service employees.

(5) Persons serving at a State college solely as a teacher in any summer session or intersession for which compensation is specifically attributable to such service in summer session or intersession.

(6) Any member of the Veterans' Home of California who is employed by said Home, or by the Post Exchange thereof or in other Post Fund activities, except as an employee of a contracting agency.

(7) Any employee paid wholly from funds not controlled by the employer or from revolving or similar funds from which regular payroll deduction of the insurance premium cannot be made.

(8) Employees of a contracting agency who are not members of the Public Employees' Retirement System or the State Teachers' Retirement System.

(c) Annuitant whose monthly allowance is insufficient to pay withholdings required under the lowest cost plan available is not eligible.

(d) Annuitants whose effective date of retirement is more than 120 days after their date of separation from employment are not eligible.

(e) Annuitants who were not enrolled at the time of separation from employment are not eligible.

(f) A family member who is a disabled child over age 23 is to be enrolled at the time of the initial enrollment of the employee or annuitant.

(g) A family member who is a disabled child over age 23 is to be continued in enrollment only if he or she is then enrolled, provided that no such child shall continue to be enrolled unless satisfactory evidence of such disability is filed with the Board during the period commencing 60 days before and ending 60 days after the effective date of the initial enrollment or the child's 23rd birthday, whichever is pertinent.

(h) The Board shall make determinations of the applicability of this section to specific employees or annuitants, or groups of employees or annuitants.

(i) A family member who is not acceptable for enrollment under the underwriting standards of the carrier where application for enrollment is under Section 599.502(c) or (f)(1)(B) is ineligible to be enrolled except during an open enrollment period.

NOTE: Authority cited: Sections 22794, 22796, 22800, 22830, 22831, 22846(a) and 22860, Government Code. Reference: Sections 22760(h), 22775, 22800, 22819, 22830, 22831, 22832 and 22837, Government Code.

HISTORY

1. Amendment of subsections (e)(2) and (f) filed 8–5–76; effective thirtieth day thereafter (Register 76, No. 32). For prior history, see Register 75, No. 49.
2. Amendment filed 6–15–79; designated effective 8–1–79 (Register 79, No. 24).
3. Amendment filed 6–27–80; designated effective 8–1–80 (Register 80, No. 26).
4. Amendment filed 6–9–86; effective thirtieth day thereafter (Register 86, No. 24).

5. Change without regulatory effect amending subsection (c) and NOTE filed 10–31–2006 pursuant to section 100, title 1, California Code of Regulations (Register 2006, No. 44).

§ 599.502. Enrollment.

(a) Type of Enrollment. An eligible employee or annuitant may enroll for self alone, self and one family member or self and two or more family members. If he or she enrolls for other than self alone, he or she shall enroll all eligible family members. All eligible family members shall be enrolled under the enrollment of only one employee or annuitant. The following family members are not required to be enrolled:

(1) A family member covered under another basic group plan that is not contracted for or approved by the Board;

(2) A family member who is a spouse not living in the member's household; or

(3) A family member who is a child who has attained the age of 18; or

(4) A family member who is a member of the armed forces.

(5) A plan shall not be liable for benefits for a family member, other than as provided in Sections 599.502(f)(1)(E) and 599.503(d), nor shall an employee or annuitant be obligated for an increased premium or charge because of such member unless he or she has been included by name in the employee's or annuitant's enrollment.

(6) Upon discovery that a family member required to be enrolled has not been so included, except as provided in Sections 599.502(f)(1)(E) and 599.503(d), the employee or annuitant shall be given notice that all coverage of family members will cease on the last day of the following month unless he or she has changed his or her enrollment to include such family members prior to the cessation of such coverage.

(b) Initial Enrollment.

(1) An eligible employee shall enroll or register not to enroll no later than his or her 60th calendar day of employment or reemployment following a break in service of at least one full monthly pay period.

(2) A permanent intermittent employee shall enroll or register not to enroll no later than 60 calendar days following the end of a control period in which he or she received credit for a minimum of 480 paid hours.

(3) An annuitant or an employee who is brought within coverage of the Act shall enroll or register not to enroll within sixty days of notice of eligibility.

(4) An employee who is on leave of absence without compensation, temporary disability compensation whether or not supplemented by sick leave or vacation, or Non–industrial Disability Leave, or Industrial Disability Leave, or other non–pay status, may not enroll while in such status but shall enroll or register not to enroll within 60 days of his or her return to pay status, if he or she would otherwise have been eligible to enroll during the nonpay status.

(5) An employee of a contracting agency which has filed an election to be subject to the Public Employees' Medical and Hospital Care Act, including an employee of such agency who was on leave of absence or other non–pay status and was enrolled in a health benefits plan of the agency, but shall enroll or register not to enroll no later than the 60th calendar day following such agency's effective date of participation under the Act.

(6) An annuitant who retired while an employee of a contracting agency which has elected to be subject to the Public Employees' Medical and Hospital Care Act, and whose retirement is effective on or prior to the effective date of such election, may enroll no later than the 60th calendar day following notification of eligibility.

(7) An employee whose enrollment did not become effective under the provisions of Section 599.503(a) because of failure to accomplish premium deductions may enroll within 60 calendar days of notification of right to enroll.

(c) Health Statement Enrollment:

An eligible employee may enroll at any time while in an employment in which he or she was eligible to but did not enroll at the time specified in this subsection, and an eligible annuitant may enroll if at the time of enrollment he or she presents a certification from the carrier of the plan that his or her enrollment is acceptable under the underwriting standards of the carrier.

(d) Re–enrollment:

(1) An employee whose enrollment terminated under Section 599.506(a)(5) may enroll within 60 calendar days following the end of a control period in which he or she received credit for a minimum of 480 paid hours.

(2) An employee whose enrollment terminated because of administrative failure to continue payroll deductions under Section 599.506(a)(1)(B) may enroll within 60 calendar days of receipt of notification of termination.

(3) A person whose enrollment terminated upon separation from employment and who is retired with an effective date no later than 120 days following the date of separation, may enroll as an annuitant within 60 calendar days of receipt of notification of eligibility or during any open enrollment period.

(4) An annuitant whose enrollment terminated under Section 599.506(d) because his or her retirement allowance was not sufficient to pay the withholdings of any plan in which he or she was eligible to be enrolled may re–enroll within 60 calendar days of notification that his or her retirement allowance is sufficient to pay the withholdings of a plan in which he or she is eligible to be enrolled.

(e) The Board will, at least once every three years, provide every employee and annuitant previously enrolled or eligible to enroll or continue enrollment an opportunity for enrollment, and every enrolled employee and annuitant an opportunity for change of enrollment, on such terms and conditions as it may prescribe.

(f) Change of Enrollment.

(1)(A) An enrolled employee or annuitant may, prior to, at the time of, or within 60 calendar days after acquiring his or her first eligible family member required to be enrolled, change his or her enrollment to include all family members required to be enrolled.

(B) An enrolled employee or annuitant may change his or her enrollment to include all eligible family members required to be enrolled who are acceptable for enrollment under underwriting standards of the carrier if at the time of such change he or she presents a certification of such acceptability from the carrier of the plan in which he or she is enrolled or if such change of enrollment is made during an open enrollment period.

(C) A family member who is not enrolled because of other group coverage or because such person is a spouse not living in the employee's or annuitant's household may not thereafter be enrolled as a family member except during an open enrollment period or pursuant to the carrier's certification of acceptability under its underwriting standards.

(D) A family member who is a child who has attained the age of 18 and who is not enrolled may not be enrolled except upon return from military service as provided in Section 599.502(f)(2), or pursuant to the carrier's certification of acceptability under underwriting standards, or during an open enrollment period.

(E) Notwithstanding any other provision of this subchapter, an employee or annuitant enrolled for self only may enroll a newborn or adopted child provided application for enrollment is received within 60 calendar days of the date of birth or the date physical custody was obtained. The coverage of a newborn or adopted child of an employee or annuitant enrolled for self only begins on the date of birth or the date physical custody is obtained and ends on the last day of that month unless an application to enroll that child is received.

(2) An employee or annuitant may at any time change his or her enrollment from self and family to self alone, or delete an eligible family member who is a child who has attained the age of 18 or enters military service. An employee or annuitant may decrease "family member" enrollment from self and two or more to self and one family member on or after the day on which the last family member in excess of one:

(A) ceases to be a family member;

(B) becomes enrolled in another basic group plan; or

(C) in case of a spouse, ceases to live in his or her household or enters military service.

A spouse whose enrollment is terminated on the basis of ceasing to live in the household may not be enrolled thereafter except during an open enrollment period or pursuant to the carrier's certification of acceptability under its underwriting standards. A family member who is a spouse or a child who was deleted from an employee's or annuitant's enrollment upon entering military service or was in military service at the time of initial enrollment or at the time he or she became a family member may be enrolled upon return from military service.

When a mandatory change of enrollment results in a retroactive cancellation or deletion of enrollment and creates a difference in premium based on the date a family member became ineligible for coverage and the date an employee or annuitant changed his or her enrollment to delete the ineligible family member, the employer and employee or annuitant may receive a refund. The amount of the refund shall not exceed those excess premiums paid for a period of up to six months prior to the date

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on which the action is processed and recorded, pursuant to the employee's or annuitant's request for retroactive cancellation or deletion of the ineligible family member.

(3) An employee or annuitant who is not enrolled, but is covered under the Public Employees' Medical and Hospital Care Act and this subchapter by enrollment of a spouse, may enroll in the same plan as was the spouse for self alone or self and eligible family members within 60 calendar days after termination of the spouse's enrollment. An employee who is not enrolled, but is covered by the enrollment of a parent, may enroll in any plan available within 60 calendar days after the termination of coverage as a family member. An employee or annuitant who is covered by enrollment of another under this subchapter may enroll in the same plan for self alone or self and eligible family members within 60 calendar days after the effective date of a change terminating his or her enrollment.

(4) An employee who is enrolled as an annuitant and whose status as an annuitant terminates, may enroll in the same plan under which he or she was covered as an annuitant, in a manner which will continue coverage.

(5)(A) An employee or annuitant who is enrolled in a plan with a restricted geographic service area and who moves, including all enrolled family members, or changes employment address may, within 31 calendar days before the move and ending 60 calendar days after the move, enroll in another health benefits plan.

(B) An employee or annuitant who is enrolled in a plan with a restricted geographic service area and who moves, and whose enrolled family members do not move, may, within 31 calendar days before the move and ending 60 calendar days after the move, enroll in another health benefits plan.

(C) An employee or annuitant who is enrolled in a plan with a restricted geographic service area and whose enrolled family members move, may within 31 calendar days before the move and ending 60 calendar days after the move, enroll in another health benefits plan.

(D) An employee or annuitant who moves into, or commences employment within, the service area of a plan with a restricted geographic service area may change his or her enrollment to that plan within the period beginning 31 calendar days before and ending 60 calendar days after the move.

(E) An employee or annuitant enrolled in a supplemental plan who moves, other than temporarily, out of the United States as defined in the Federal Social Security Act, may change his or her enrollment to the basic plan provided by the carrier of the supplemental plan.

(6) An employee or annuitant who is enrolled in a health benefits plan which ceases to be an approved health benefits plan may enroll in another plan at any time within 60 calendar days after the date set by the Board for withdrawal of its approval of the plan.

(7) When an employee or annuitant enrolled for self and family dies, leaving a family member as an annuitant entitled to enrollment in a health benefits plan, the enrollment shall continue by enrollment of the surviving annuitant. The family member annuitant may change or cancel the enrollment providing he or she does so within 60 calendar days of notification of continuation. The effective date of the change or cancellation shall be the first of the month following the death.

(8) For purposes of this subsection (f) and subsection (a) of this section, a change in custody of a child, whether or not accompanied by a change in economic dependency, at the option of the enrolled employee or employees may be considered to terminate or begin eligibility of the child as a family member of the employee or employees affected by the change in custody.

(9) An employee whose enrollment was continued under Section 599.504(b), (c), (d), (e) or (g) may within 60 days of return to pay status make any change in enrollment which he or she could have made had he or she been in pay status during the continuation.

(10) Upon a determination by the Board or the Executive Officer that an employee or annuitant is unable to maintain a satisfactory physician–patient or plan–employee–annuitant relationship, the Board or Executive Officer may permit a change of enrollment to another plan.

(11) An employee may add or delete family members under the provisions of this section during a period of continuation of enrollment under the provisions of Section 599.504.

(12) Enrollment of any person in a supplemental plan may not be changed to enrollment in a basic plan unless there is an involuntary termination of Medicare benefits or as provided in subdivision (f)(5)(E) of this section.

(g) Multiple Enrollment.

(1) A family member may be enrolled with respect to only one employee or annuitant. An employee or annuitant, who is also a family member of an employee or annuitant, may not be enrolled both as an employee or annuitant and a family member. Enrollment as a family member continues upon entry into employment unless the person enrolls under the rules applicable to employees, in which event enrollment as a family member terminates on the effective date of enrollment as an employee.

(2) An annuitant who would otherwise also be eligible to enroll as an employee must enroll as an annuitant; however, an annuitant who fails to enroll under rules applicable to annuitants and who subsequently becomes an employee, may enroll under rules applicable to employees.

(3) Employees who are employed in more than one position with an employer or employed by more than one employer may enroll with respect to one position or employer only.

(4) Employees and annuitants may not enroll in more than one plan. For the purposes of this subsection, one plan includes a combination of basic or supplemental plans. Where an employee or annuitant has filed more than one enrollment form, in the absence of specific instruction from the employee or annuitant to the contrary, the last enrollment form filed shall be taken as indicating the plan in which the employee desires to enroll.

(h) Late Enrollment or Change of Enrollment. Upon a determination by the Board or the Executive Officer that an employee or annuitant was unable, for cause beyond his or her control, to enroll or to change enrollment within the time limits prescribed by this subchapter, the Board shall accept his or her enrollment or change of enrollment provided he or she enrolls or changes enrollment within 31 days after he or she is first able to do so.

(i) Procedure. The employing office will afford each eligible employee and annuitant an opportunity to enroll or to register not to enroll during such times as his enrollment is authorized under these rules by supplying the necessary information relating to available plans and by assisting in the completion of a health benefits plan enrollment form. The employing office will forward all such forms properly completed to the Board's Health Benefits Division.

NOTE: Authority cited: Sections 22794, 22796, 22803, 22830, 22846 and 22860, Government Code. Reference: Sections 22830, 22831, 22832, 22834, 22836, 22837, 22839, 22840, 22841, 22842, 22843, 22844, 22846, 22847 and 22848, Government Code.

HISTORY

1. Amendment of subsections (c), (d)(3), and (f)(1)(D) filed 8–5–76; effective thirtieth day thereafter (Register 76, No. 32). For prior history, see Register 75, No. 49.
2. Amendment filed 6–15–79; designated effective 8–1–79 (Register 79, No. 24).
3. Amendment filed 6–27–80; designated effective 8–1–80 (Register 80, No. 26).
4. Amendment of subsections (a)–(d) and (f) filed 6–9–86; effective thirtieth day thereafter (Register 86, No. 24).
5. Amendment of subsections (f)(5)(A)–(D) filed 10–4–2001 as an emergency; operative 10–4–2001 (Register 2001, No. 40). A Certificate of Compliance must be transmitted to OAL by 2–1–2002 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 10–4–2001 order transmitted to OAL 2–1–2002 and filed 3–18–2002 (Register 2002, No. 12).
7. Amendment of subsection (f)(2)(C) and amendment of NOTE filed 6–24–2005; operative 6–24–2005 pursuant to Government Code section 11343.4 (Register 2005, No. 25).

§ 599.503. Effective Date of Enrollment.

(a) Normal Effective Date. The effective date of enrollment, re–enrollment, or change of enrollment shall be the first of the month following the date the employee or annuitant's Health Benefits Plan Enrollment

Form is received in the employing office, subject to deferral under subsection (b) of this section. An enrollment shall not become effective if payroll deduction is not accomplished within six months following the date on which such enrollment would normally have become effective.

(b) Deferred Effective Date. The effective date of enrollment of an employee or annuitant who, in the month preceding that in which his or her enrollment would otherwise be effective, has insufficient earnings after all other mandatory deductions to permit deduction of his or her full contributions, shall be the first day of the month following that in which his or her earnings after other mandatory deductions are sufficient to permit such deduction. This applies to an employee hired on the last day of the month which is also the first day of a pay period.

(c) Effective Date of Enrollment by Certification of Acceptability. The effective date of enrollment, re-enrollment or change of enrollment for an employee or annuitant with respect to whom a certification of acceptability is received by his or her employing office shall be the first day of the following month subject to deferral under subsection (b) of this section.

(d) Effective Date of Enrollment of a Newborn Child or Adopted Child of an Employee or Annuitant Enrolled for Self and One or More Family Members. Notwithstanding the effective date of enrollment as otherwise specified in this section, and without requirement of any prior enrolling action, enrollment of a newborn child or adopted child of an employee or annuitant who has enrolled family members shall be effective on the date of birth or the date physical custody is obtained, and any increase in premium because of the addition of such family member shall be effective on the first of the following month.

(e) Effective Date of Enrollment of an Annuitant on Approval of Retirement. The effective date of enrollment of an annuitant under Section 599.502(d)(3) is the first of the month following the month in which retirement is approved, but in no event earlier than the first day of the month following the effective date of retirement.

(f) Effective Date of Enrollment of an Eligible Family Member (other than an adopted or newborn child). The effective date of a change of enrollment adding an eligible family member, other than an adopted or a newborn child, shall be the first of the month following the date the Health Benefits Plan Enrollment Form is received in the employing office. Enrollment of an eligible family member may not be earlier than the first day of the month following the acquisition of the family member.

(g) Contracting Agency Employees and Annuitants. Enrollments of a contracting agency's employees and annuitants which are received in the office of the Board on or before the last day of the month immediately preceding the effective date of the agency's participation under the Act shall be effective on the effective date of such agency participation.

(h) Effective Date of Enrollment of a Newborn Child or Adopted Child of an Employee or Annuitant Enrolled for Self Only. The effective date of enrollment of a newborn or adopted child of an employee or annuitant enrolled for self only shall be the first day of the month following the date of birth or the date physical custody is obtained. Any premium increase resulting from the enrollment of such child shall be due from the effective date of enrollment.

(i) Effective Date in Open Enrollment Period. The effective date of enrollment in special or limited open enrollment period shall be fixed by the Board in its action providing such open enrollment period.

NOTE: Authority cited: Sections 22794, 22796, 22846(a) and 22860, Government Code. Reference: Section 22846(a), Government Code.

HISTORY

1. Amendment filed 6-15-79; designated effective 8-1-79 (Register 79, No. 24). For prior history, see Register 75, No. 19.
2. Amendment filed 6-27-80; designated effective 8-1-80 (Register 80, No. 26).
3. Amendment of subsections (e) and (g)-(j) filed 6-9-86; effective thirtieth day thereafter (Register 86, No. 24).
4. Change without regulatory effect amending subsection (d) and NOTE filed 10-31-2006 pursuant to section 100, title 1, California Code of Regulations (Register 2006, No. 44).

§ 599.504. Continuation of Enrollment.

Subject to the right of an employee or annuitant to cancel his or her enrollment at any time, the enrollment of an employee or annuitant continues without change when he or she:

(a) returns to covered employment without a break in service of one or more full monthly pay periods.

(b) is granted a leave of absence without pay under the State Civil Service Act and the rules of the Department of Personnel Administration for a period of one or more full monthly pay periods including leaves of absence for military duty, or other comparable leave, or begins an absence for which he or she has applied for temporary disability compensation, provided he or she files with the Board application for continuation of enrollment prior to the commencement of the leave, or no later than the last day of the month following the month in which the last payroll deduction was taken.

(c) institutes legal proceedings in appealing dismissal from service for cause, provided he or she files with the Board application for continuation of enrollment no later than the last day of the month following the month in which the last payroll deduction was taken.

(d) is suspended from service for one or more full monthly pay periods without pay, provided he or she files with the Board application for continuation of enrollment no later than the last day of the month following the month in which the last payroll deduction was taken.

(e) receives in any monthly pay period insufficient compensation, after all other mandatory deductions, to permit deduction of his or her full contribution providing proper application for continuation of enrollment is filed no later than the last day of the month following the month in which the last payroll deduction was taken.

(f) applies for disability retirement and files an application for continuation of enrollment no later than the last day of the month following the month in which the last payroll deduction was taken. Upon receipt of premiums from the retirement system, the carrier shall refund overpayments to the annuitant.

(g) first attains the status of "annuitant." The Retirement System shall continue the enrollment unchanged and the annuitant contributions required under the plan shall be deducted from the annuitant's retirement allowance.

(h) enters nonpay status as a permanent employee of a State college employed on a less-than-twelve-month basis, provided he or she files application for continuation of enrollment with the Board no later than the last day of the month following the month in which the last payroll deduction was taken.

If an enrolled employee or annuitant is not competent to act, the guardian, conservator, or person having special power of attorney of such enrolled employee or annuitant may act on his or her behalf to accomplish continuation of any enrollment permitted by this section.

Failure to file an application for continuation or failure to pay premiums after filing an application will result in loss of coverage for any period for which premiums were not paid.

NOTE: Authority cited: Sections 22794, 22796 and 22846(a), Government Code. Reference: Section 22846(a), Government Code.

HISTORY

1. Amendment of subsection (f) filed 8-5-76; effective thirtieth day thereafter (Register 76, No. 32). For prior history, see Register 71, No. 3.
2. Amendment filed 6-15-79; designated effective 8-1-79 (Register 79, No. 24).
3. Amendment filed 6-27-80; designated effective 8-1-80 (Register 80, No. 26).
4. Amendment filed 6-9-85; effective thirtieth day thereafter (Register 86, No. 24).
5. Change without regulatory effect amending NOTE filed 10-31-2006 pursuant to section 100, title 1, California Code of Regulations (Register 2006, No. 44).

§ 599.505. Cancellation of Enrollment.

(a) An enrolled employee or annuitant may cancel his or her enrollment at any time by filing with his or her employing office a properly completed Health Benefits Plan Enrollment Form requesting such cancellation. The effective date of cancellation shall be midnight of the last

day of the month in which the enrollment form is received by the employing office.

(b) Upon cancellation, an employee or annuitant and the members of his or her family are not entitled to convert to an individual health benefits contract.

NOTE: Authority cited: Sections 22794, 22796 and 22846(a), Government Code. Reference: Section 22846(a), Government Code.

HISTORY

1. Amendment of subsections (a) and (c) filed 6–15–79; designated effective 8–1–79 (Register 79, No. 24). For prior history, see Register 69, No. 8.
2. Amendment of subsections (a) and (c) filed 6–27–80; designated effective 8–1–80 (Register 80, No. 26).
3. Repealer of subsection (c) filed 6–9–86; effective thirtieth day thereafter (Register 86, No. 24).
4. Change without regulatory effect amending NOTE filed 10–31–2006 pursuant to section 100, title 1, California Code of Regulations (Register 2006, No. 44).

§ 599.506. Termination of Enrollment.

(a) An employee's enrollment ceases at midnight of the earliest of the following dates:

(1) The last day of the month following the month in which:

(A) employment is terminated either by resignation or by his or her agency for reasons other than for cause;

(B) the last payroll deduction was taken when payroll deduction was discontinued through administrative error if such deduction was not taken for a continuous period of six months;

(2) Where enrollment has been continued while appealing dismissal from service for cause, under the provisions of Section 599.504, the last day of the month in which such appeal action or actions has or have been terminated with the dismissal being upheld or in which the Board determines that the employee has ceased to diligently pursue his or her appeal.

(3) The last day of the month following the month in which employment status changes so that he or she is excluded from enrollment.

(4) The last day of the month in which he or she dies.

(5) The last day of the month following the last month during which a permanent intermittent employee worked less than 480 hours during a six–month control period or 960 hours during a twelve–month control period.

(6) The last day of the month in which application for disability retirement is denied or withdrawn by the employee where enrollment was continued under Section 599.504(f) pending action on the application.

(b) An annuitant's enrollment ceases at midnight of the earliest of the following dates:

(1) The last day of the month in which he or she dies.

(2) The last day of the month following the month in which he or she ceases to be in the status of "annuitant," unless he or she is eligible for enrollment as an employee in which case his or her enrollment will continue under the plan in which he or she is enrolled.

(c) The coverage of a family member under an employee's or annuitant's enrollment ceases at midnight of the earliest of the following dates, unless he or she is eligible to enroll as an employee, in which case, if he or she enrolls within 60 calendar days after said date, his or her enrollment continues under the plan in which he or she enrolls:

(1) The last day of the month in which he or she ceases to be a family member, or to be eligible for enrollment as a family member. The enrollment of an employee or annuitant shall not be changed by such termination of coverage, and his or her contribution shall continue unchanged until he or she changes enrollment in the manner and at the time provided under Section 599.502(f)(2) or until an administrative document is processed. However, payment by the carrier of any difference between the premium paid between the date of termination of coverage and the effective date of the change in enrollment, and that which would have been paid had the change in enrollment been effective on the date of termination of coverage, shall not exceed those excess premiums paid for a period of up to six months prior to the date on which the action is processed and recorded, pursuant to the employee's or annuitant's request for retroactive cancellation or deletion of the ineligible family member. Payment shall be made to the employer or the enrolled employee or annuitant as their interests appear and in such manner as may be directed by the Executive Officer of the Board.

(2) The day the employee or annuitant ceases to be enrolled, unless the family member continues to be enrolled as a surviving annuitant under the provisions of Section 599.502(f)(7).

(3) On the effective date of an employee's or annuitant's change of enrollment to decrease or terminate family member enrollment.

(d) If the retirement allowance of an annuitant is not sufficient to pay the withholdings for the plan in which the annuitant is enrolled, the retirement system from which the allowance is being paid shall notify the annuitant of the plans available at a cost not in excess of the retirement allowance. The annuitant may enroll in another plan whose cost is no greater than his or her allowance, if such plan is available. If the annuitant does not or cannot elect a plan at a cost to him or her not in excess of the allowance, the enrollment of the annuitant shall cease, effective as of the end of the last month for which withholding was made. Each annuitant whose enrollment is so terminated is entitled to conversion pursuant to Section 599.507.

(e) Whenever under this section enrollment terminates on the last day of the month and the monthly payroll period for a state department or agency does not coincide with the calendar month, enrollment ceases as of the last day of the calendar month most closely corresponding to the payroll month in which the event resulting in the termination occurs.

NOTE: Authority cited: Sections 22794, 22796 and 22846, Government Code. Reference: Section 22846, Government Code.

HISTORY

1. Amendment filed 6–15–79; designated effective 8–1–79 (Register 79, No. 24). For prior history, see Register 72, No. 24.
2. Amendment filed 6–27–80; designated effective 8–1–80 (Register 80, No. 26).
3. Amendment filed 6–9–86; effective thirtieth day thereafter (Register 86, No. 24).
4. Amendment of subsection (c)(1) and amendment of NOTE filed 6–24–2005; operative 6–24–2005 pursuant to Government Code section 11343.4 (Register 2005, No. 25).

§ 599.507. Conversion.

An employee or annuitant whose enrollment is terminated other than by cancellation or withdrawal of his or her employer from participation in the Public Employees' Medical and Hospital Care Act, and any family member whose coverage terminated because of termination of enrollment of an employee or annuitant or because of loss of family member status, is entitled to the issuance of a conversion plan provided that application is made and the premium or other periodic charge is paid within one month of the date of termination of enrollment or termination of family member status, in which event coverage under the conversion plan shall become effective at 12:01 a.m. the day following such termination.

NOTE: Authority cited: Sections 22794, 22796 and 22842, Government Code. Reference: Section 22842, Government Code.

HISTORY

1. Amendment filed 7–31–68 as an emergency; effective upon filing. (Register 68, No. 29). For prior history, see Register 67, No. 43.
2. Certificate of Compliance—Section 11422.1, Gov. Code, filed 11–27–68 (Register 68, No. 45).
3. Amendment filed 6–15–79; designated effective 8–1–79 (Register 79, No. 24).
4. Amendment filed 6–27–80; designated effective 8–1–80 (Register 80, No. 26).
5. Amendment filed 6–9–86; effective thirtieth day thereafter (Register 86, No. 24).
6. Change without regulatory effect amending NOTE filed 10–31–2006 pursuant to section 100, title 1, California Code of Regulations (Register 2006, No. 44).

§ 599.508. Minimum Standards for Health Benefits Plans.

(a) To be qualified to be approved or adopted by the Board, a health benefits plan must:

(1) Comply with the Public Employees' Medical and Hospital Care Act and this subchapter, as amended from time to time.

(2) Accept enrollment, in accordance with this subchapter, without regard to physical condition, age, ethnic origin, religion or sex at the time of original group enrollment, of all eligible employees or annuitants, except that plans which are sponsored by employee organizations need not accept enrollment of persons who are not members of the organization.

(3) Provide for coverage of enrolled employees and annuitants, and covered members of their families.

(4) Extend to all employees, annuitants and family members who are eligible therefor the right, during the time allowed, to convert to a contract for health benefits regularly offered by the carrier, or an appropriate affiliate, for group conversion purposes. Such contract must, at the option of the employee, annuitant or family member, be continued in effect by the carrier except for fraud or nonpayment of contractual charges.

The contract shall, upon conversion, become effective as of the day following the date of termination of coverage, and the employee or annuitant shall pay the entire cost thereof directly to the carrier. The nongroup contract may not deny or delay any benefit that it provides for a person converting from a plan approved under this subchapter, except to the extent that benefits are continued under the health benefits plan from which he or she converts.

The Board may request an extension of time for conversion because of delayed determination of ineligibility for service retirement or disability retirement, in which case conversion must be permitted until the date specified by the Board in its request for extension.

Any such conversion contract may provide for an adjustment of benefits with respect to any covered person at such age as he or she becomes eligible to participate in benefits provided under either Part A or Part B of Title XVIII, Social Security Act.

(5)(A) Provide that any person, whether employee, annuitant, or family member, whose enrollment terminates other than by voluntary cancellation or termination of the group agreement, and who, on the day of termination is hospitalized, shall be granted a continuation of the benefits of the plan with respect to medical conditions that were present or pre-existing at the time of hospitalization or occurred during the hospitalization and which require continued hospitalization, but not beyond the 91st day following the termination.

(B) Provide that any person, whether employee, annuitant, or family member, whose enrollment has been changed from one plan to another and who on the effective date of such change is hospitalized, shall be granted a continuation of the benefits of the prior plan with respect to medical conditions that were present or pre-existing at the time of hospitalization or occurred during the hospitalization and which require continued hospitalization, but not beyond the 91st day following the last day of enrollment in the prior plan. Upon change of enrollment to the plan of a person so hospitalized on the effective date of the change, benefits with respect to the cause of such hospitalization shall not be paid or provided while that person is entitled to continuance of benefits under the prior plan, but all other benefits will be paid during such period.

(C) Provide that any person whether employee, annuitant or family member who is totally disabled on the date of termination of the group contract, shall be granted a continuation of the benefits of the plan with respect to the cause of such total disability for up to 12 months after the date of termination, subject to plan maximums and provisions.

(6) Provide that each employee and annuitant who enrolls in a plan receive evidence of enrollment in a form to be approved by the Board, summarizing the conditions of the plan including but not limited to, those concerning benefits, claims, and payment of claims.

(7) Provide a standard rate structure which contains one standard individual rate, one standard rate for employees and annuitants with one dependent, and one standard rate for employees and annuitants with two or more dependents, without geographical or other variation. Notwithstanding the foregoing, and subject to the approval of the Board, a health benefits plan may charge contracting agency employees and annuitants rates that are based on regional variations in the costs of health care services.

(8) Maintain statistical records regarding the plan as are agreed to by the Board, separately from those of any other activities or benefits conducted or offered by the carrier administering the plan, so as to reveal the utilization of benefits under the plan, the gross and net cost of such benefits, and the administrative cost experienced under the plan as it pertains to employees and annuitants enrolled under this subchapter.

(9) Provide for payment to a special reserve, as of the end of any contract period, of so much of the contributions and other income attributable to the plan as exceeds the sum incurred for benefit payments, administrative expenses, premium and other taxes, risk charges, and other retention charges. Upon the request of the Board, made after a public hearing on the question, contribution rates must be reduced and/or benefits increased, whichever is appropriate in judgment of the Board, whenever the special reserve exceeds the latest three calendar months' contributions paid under the plan. In determining the amount of incurred benefits paid under the plan, reasonable reserves may be established for pending claims and incurred but unreported claims. All such claim reserves, and the special reserves, must be accounted for separately from reserves maintained by the carrier for other plans. Income derived from the investment of the special reserves shall be credited to the reserves at 100% of the plan's annual corporate rate of interest. Income reasonably attributable to investment of claim reserves shall be taken into account in determining the amount of retention charges. In the event the contract is terminated, the underwriting or obligation under the plan is assumed by a different carrier, or approval of the plan is withdrawn, the special reserve and such portion of any claim reserves as are not finally utilized in the payment of benefits under the plan shall be paid into the Public Employees' Contingency Reserve Fund for the benefit of the plan, and the Board may then transfer such reserves to successor plans and/or carriers on such basis as it determines to be equitable after a public hearing held within 18 months following the effective date of the plan's termination, withdrawal of approval, or transfer to a different carrier. For a carrier providing service benefits, the board may approve the use of other equitable and practical financial procedures. For plans that are community-rated, the carrier shall, in lieu of being subject to the foregoing provisions of this paragraph, agree to furnish such financial and accounting reports and to follow such recording procedures as may be requested by the Board and that are consistent with the normal operations of the plan.

(10) Provide that in the event an employee or annuitant is dissatisfied with the amount paid or service rendered pursuant to his or her claim on his or her behalf or on behalf of a family member and so requests, representatives of the parties including a representative of the Board will confer in an effort to reach a settlement, provided that no agreement reached by such conferees shall bind the employee, annuitant, or carrier without each party's consent or bar any remedy otherwise available.

(b) To be qualified to be approved by the board, a health benefits plan must not:

(2) Have an initiation, service, enrollment, or other fee or charge in addition to the rate charged for the plan, except that notwithstanding subparagraph (b)(1) of this section, comprehensive group practice prepayment plans and individual practice prepayment plans may impose an additional charge to be paid directly by the employee or annuitant for certain medical supplies and services, if the supplies and services on which additional charges are imposed are clearly set forth in advance and are applicable to all employees and annuitants. This subparagraph does not apply to charges for membership in employee organizations sponsoring plans.

NOTE: Authority cited: Sections 22794 and 22796, Government Code. Reference: Sections 22796, 22850(f)(1) and 22864(b)(3), Government Code.

HISTORY

1. Amendment of subsection (a)(2) filed 1-13-71; designated effective 4-1-71 (Register 71, No. 3). For prior history see Register 67, No. 43.
2. Amendment of subsection (a)(9) filed 12-2-75; effective thirtieth day thereafter (Register 75, No. 49).
3. Amendment of subsections (a)(1)-(a)(4), (a)(7) and (b)(1) filed 6-15-79; designated effective 8-1-79 (Register 79, No. 24).
4. Amendment filed 6-27-80; designated effective 8-1-80 (Register 80, No. 26).
5. Amendment of subsection (a) filed 6-9-86; effective thirtieth day thereafter (Register 86, No. 24).
6. Amendment of subsections (a)(2)-(3) filed 10-4-2001 as an emergency; operative 10-4-2001 (Register 2001, No. 40). A Certificate of Compliance must be transmitted to OAL by 2-1-2002 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 10-4-2001 order transmitted to OAL 2-1-2002 and filed 3-18-2002 (Register 2002, No. 12).

8. Amendment of subsection (a)(7) and amendment of NOTE filed 4–15–2004 as an emergency; operative 4–15–2004 (Register 2004, No. 16). A Certificate of Compliance must be transmitted to OAL by 8–13–2004 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 4–15–2004 order transmitted to OAL 6–25–2004 and filed 8–9–2004 (Register 2004, No. 33).
10. Change without regulatory effect amending NOTE filed 10–31–2006 pursuant to section 100, title 1, California Code of Regulations (Register 2006, No. 44).

§ 599.509. Minimum Standards for Health Benefits Carriers.

A health benefits plan will not be approved by the Board unless the carrier of the plan meets, in addition to the requirements of the Public Employees' Medical and Hospital Care Act, the following additional requirements:

(a) It must be lawfully engaged in the business of supplying health benefits.

(b) It must have, in the judgment of the Board, the financial resources, organizational facilities and experience in the field of health benefits to carry out its obligations under the plan.

In the case of carriers for service benefit plans and indemnity benefit plans, the Board in forming its judgment shall be guided by such factors as the length of time the carrier has been in the prepaid health benefits field, the capacity of the carrier to effectively service claims of enrolled employees and annuitants throughout the State, the general financial stability of the carrier as exhibited by examinations of the State Insurance Commissioner or other regulatory bodies, and the extent to which the carrier underwrites other prepaid health benefits plans in California.

In the case of carriers for group practice prepayment plans, the Board in forming its judgment shall be guided by such factors as the number of physicians practicing in the group, the number of physicians practicing in the group as specialists and their qualifications, the proportion of the group's income which is derived from prepayment as opposed to fee–for–service, the extent to which the group utilizes outside consultants, the extent to which ancillary and other related services, both in and out of the hospital, are available in the group, the stability of the group's finances and organization, and the potential for enrollment of employees and annuitants under the plan as well as the plan's capacity for servicing such potential enrollees including a demonstrated commitment to cost containment, innovative services, effectiveness of utilization review, and success in achieving market penetration.

In the case of carriers for individual practice prepayment plans, the Board in forming its judgment shall be guided by such factors as the number of physicians participating in the plan, the number of physicians practicing as specialists and their qualifications, the extent to which ancillary and other related services, both in and out of the hospital, are covered, the stability of the plan, finances and organization of the plan, the plan's financial responsibility, and the potential for enrollment of employees and annuitants under the plan, as well as the plan's capacity for servicing such potential enrollees including a demonstrated commitment to cost containment, innovative services, effectiveness of utilization review, and success in achieving market penetration.

(c) It must agree to keep such reasonable financial and statistical records and furnish such reasonable financial and statistical reports with respect to the plan as may be requested by the Board, which may include but is not limited to:

(1) Number of persons enrolled under the plan, by employee, annuitant, and family coverage.

(2) Contributions received from such employees and annuitants, and the employer.

(3) Claims incurred on behalf of such employees and annuitants, including health benefits payments made, or services rendered, by employee, annuitant, and family coverage.

(4) Expense and risk or other retention charges.

(5) Reserves established under the plan.

(d) It must agree to permit representatives of the Board to audit and examine its records and accounts which pertain, directly or indirectly, to the plan at such reasonable times and places as may be designated by the Board. However, any privileged medical information relating to any claimant's medical history and record need not be released by the carrier or revealed to the Board or its representatives, to the extent that any patient's identity is revealed. However, such data must be provided in abstract format upon request by the Board.

(e) It must agree to comply with requirements of the Board in the solicitation of enrollment of employees and annuitants and in any advertising concerning or involving participation in the plan.

(f) It must agree to accept, subject to adjustment for error or fraud, in payment of its prepayment charges for health benefits for all employees and annuitants enrolled in its plan, the contribution of each employee and annuitant withheld from the salary or retirement allowance payable to him or her.

NOTE: Authority cited: Sections 22794 and 22796, Government Code. Reference: Section 22796, Government Code.

HISTORY

1. Amendment of subsection (f) filed 11–27–68 as an emergency; effective upon filing (Register 68, No. 45). For prior history, see Register 68, No. 29.
2. Certificate of Compliance—Sec. 11422.1, Gov. Code, filed 2–20–69 (Register 69, No. 8).
3. Amendment filed 6–15–79; designated effective 8–1–79 (Register 79, No. 24).
4. Amendment filed 6–27–80; designated effective 8–1–80 (Register 80, No. 26).
5. Amendment filed 6–9–86; effective thirtieth day thereafter (Register 86, No. 24).
6. Change without regulatory effect amending NOTE filed 10–31–2006 pursuant to section 100, title 1, California Code of Regulations (Register 2006, No. 44).

§ 599.510. Minimum Scope and Content of Basic Health Benefits Plans.

(a) No contract shall be made or approved for a basic health benefits plan which does not include in its coverage the following benefits. The payment schedule for such benefits must be sufficient in the judgment of the Board to meet the major share of usual, customary or reasonable charges for such services.

(1) Hospital benefits.

(A) In–hospital.

Coverage must be extended to enrolled employees, annuitants, and family members to provide benefits in the event of confinement in a hospital because of injury or sickness.

Hospital "room and board benefits" must be provided for at least the first 31 days of hospital confinement. "Miscellaneous hospital benefits" must be provided for hospital charges incurred over and above those for room and board, such as charges for the use of operating and cystoscopic rooms, anesthetic supplies, anesthesia when supplied by the hospital as a regular service and administered by a salaried employee, ordinary splints, plaster casts, and surgical dressings.

(B) Outpatient—hospital.

Coverage must be extended to enrolled employees, annuitants, and family members to provide benefits because of accidental bodily injury, surgery or emergency treatment for sickness when not admitted to a hospital or confined as a registered bed patient. Such benefits shall include but are not limited to: 1. Charges for use of operating and cystoscopic rooms, 2. Charges for anesthetic supplies and anesthesia when supplied by the hospital as a regular service and administered by a salaried employee, and 3. Charges for ordinary splints, plaster casts and surgical dressings.

(2) Surgical Benefits In and Out of the Hospital.

Coverage must be extended to enrolled employees, annuitants and family members to provide benefits in the event of surgical operations performed because of injury or sickness.

(3) In–hospital medical benefits.

Coverage must be extended to enrolled employees, annuitants, and family members to provide benefits for medical services rendered by attending physicians or physician anesthetists, other than those of a surgeon as described above, while a registered bed patient in a hospital.

(4) Outpatient medical benefits.

Coverage must be extended to enrolled employees, annuitants and family members to provide benefits for medical services rendered on an

outpatient basis. Such services shall include those of a physician and surgeon for usual medical services and a physician anesthetist.

(5) Diagnostic, X-ray, and laboratory examinations benefits in and out of the hospital. Coverage must be extended to enrolled employees, annuitants, and family members and shall include those services of medical and paramedical personnel such as, but not restricted to, a pathologist, or a roentgenologist to provide for all ordinary clinical and pathological laboratory services and X-ray examinations. Such services may be rendered either by physicians or by salaried hospital or clinical personnel as appropriate.

(6) Maternity benefits. Coverage must be extended to each enrolled employee, annuitant, and covered family member to provide medical and hospital benefits for maternity care.

(7) Ambulance service benefits. Coverage must be extended to enrolled employees, annuitants, and family members to provide benefits for necessary local professional ambulance service to a hospital.

Determination of usual, customary, and reasonable charges for purposes of this subsection 599.510(a) shall take into account the Relative Value Studies of the California Medical Association with respect to any service included in such Studies.

(b) There shall be excluded from coverage set forth above:

(1) charges incurred in connection with bodily injury or disease covered by worker's compensation statutes or similar legislation.

(2) charges for which the claimant has been or is entitled to be reimbursed under any other basic hospital, surgical or medical plan not subject to these rules for which the employer shall have paid any part of the costs. Premiums or other consideration paid for the coverage not provided shall be returned to the person, state agency or contracting agency equitably entitled thereto.

(3) charges incurred during confinement in a hospital owned or operated by the United States Government, charges for services, treatments or supplies furnished by or for the United States Government or paid for by said United States Government, or charges incurred during confinement in a hospital owned or operated by a state, province, or political subdivision, unless there is an unconditional requirement to pay these charges without regard to any rights against others, contractual or otherwise.

(4) services and charges for services for which the claimant is entitled to have payment made on his or her behalf under Part A or Part B, Title XVIII of the Social Security Act.

(5) charges in accordance with such other exclusions as may be agreed to by the Board.

(c) There may be excluded from coverage set forth above:

(1) charges incurred by or on behalf of a family member or services received by a family member during a continuous period of hospitalization which commenced before the effective date of the enrollment if eligibility to enroll including him or her in coverage of a plan derives from other than an open enrollment period; and

(2) charges incurred or services received by an employee, annuitant, or family member during a continuous period of hospitalization which commenced before the effective date of his or her enrollment if eligibility to enroll derives from an open enrollment period. Such exclusion shall no longer apply upon the 91st day of enrollment in the plan.

NOTE: Authority cited: Sections 22794 and 22796, Government Code. Reference: Sections 22796, 22850, 22853 and 22860, Government Code.

HISTORY

1. Amendment of subsection (b)(2) filed 7-31-68 as an emergency; effective upon filing (Register 68, No. 29). For prior history, see Register 66, No. 10.
2. Certificate of Compliance—Section 11422.1, Gov. Code, filed 11-27-68 (Register 68, No. 45).
3. Amendment of subsection (b)(2) filed 8-5-76; effective thirtieth day thereafter (Register 76, No. 32).
4. Amendment of subsections (a)(6) and (b)(1) filed 6-15-79; designated effective 8-1-79 (Register 79, No. 24).
5. Amendment filed 6-27-80; designated effective 8-1-80 (Register 80, No. 26).
6. Amendment filed 6-9-86; effective thirtieth day thereafter (Register 86, No. 24).
7. Editorial correction of Authority cite (Register 95, No. 5).
8. Change without regulatory effect amending NOTE filed 10-31-2006 pursuant to section 100, title 1, California Code of Regulations (Register 2006, No. 44).

§ 599.511. Alternative Benefit Plans.

(a) To be qualified to be approved, or contracted for, by the Board, an alternative benefit plan must comply with the Public Employees' Medical and Hospital Care Act and this subchapter.

(b) Notwithstanding any other provision of this subchapter, only employees and annuitants of contracting agencies and their family members shall be eligible to enroll in an alternative benefit plan.

(c) Notwithstanding any other provision of this subchapter, the Board may elect to offer one or more alternative benefit plans to contracting agency employers either in lieu of, or in addition to, any other health benefits plans approved or contracted for by the Board.

(d) In the event that the governing board of a contracting agency that is subject to the Public Employees' Medical and Hospital Care Act elects to provide an alternative benefit plan(s) to its employees or annuitants, it must file a resolution with the Office of Employer and Member Health Services of the Board. The resolution shall be effective on the first day of the second month following the month in which the resolution is received in the office of the Board.

NOTE: Authority cited: Sections 22794 and 22796, Government Code. Reference: Sections 22850(f)(2) and 22864(b)(3), Government Code.

HISTORY

1. New section filed 4-13-2004 as an emergency; operative 4-13-2004 (Register 2004, No. 16). A Certificate of Compliance must be transmitted to OAL by 8-11-2004 or emergency language will be repealed by operation of law on the following day. For prior history, see Register 86, No. 24.
2. Certificate of Compliance as to 4-13-2004 order transmitted to OAL 8-3-2004 and filed 9-15-2004 (Register 2004, No. 38).
3. Change without regulatory effect amending NOTE filed 10-31-2006 pursuant to section 100, title 1, California Code of Regulations (Register 2006, No. 44).

§ 599.512. Contributions.

(a) Except as otherwise provided in Section 599.513 and subsection 599.512(e), the employer shall contribute toward the cost of coverage for each enrolled employee, annuitant, and family member, other than for periods during which the enrollment of an employee is continued under the provisions of subsections 599.504(b), (c), (d), (e), (f), or (g), or for a person who is eligible to enroll only on the condition that he or she pay the total cost of his or her coverage, exclusive of contribution made by the employer to the Public Employees' Contingency Reserve Fund in the amount provided by law.

(b) The contribution of each enrolled employee and annuitant toward the cost of coverage under the plan in which he or she is enrolled shall be an amount equal to the gross contribution rate established for the plan by contract, less the contribution to be made by the employer under subsection 599.512(a). The gross contribution rate shall consist of the basic contribution rate set forth in the contract.

Where enrollment is continued under Section 599.504 and the employer does not contribute under subsection 599.512 (a), the employee shall remit monthly during such continuation the gross contribution rate for his or her coverage under the plan to the carrier on or before the tenth day of the month preceding the month for which the contribution was due, or pursuant to any other arrangement agreed to by the Board. For all other enrollments the gross contribution rate required less the contribution made by the employer under subsection 599.512 (a) shall be withheld from salary or retirement allowance warrants.

For the purposes of application of this subsection to contributions due for enrollment in a prior year, the gross contribution rate and the employer's contribution under subsection 599.512 (a) shall be such a contribution rate for the year for which contribution is due.

(c) Contributions shall commence with the first salary or retirement allowance warrant payable to the employee or annuitant preceding the effective date of enrollment, and shall be made for coverage for a full period of one month. Contributions of the employer shall commence on the effective date of enrollment.

(d) Contributions shall terminate with the last contribution made immediately prior to the termination of enrollment.

(e) Contributions for an enrolled employee absent because of workers' compensation disability for which he or she has applied for temporary disability compensation, who continues enrollment under Section 599.504, shall be paid as follows:

(1) During the period of adjudication of his or her application for compensation and thereafter during such time as he or she receives temporary disability compensation which is not supplemented by sick leave or vacation, or if such supplemental payments are not sufficient to permit the deduction of his or her contribution, the employee shall pay the total cost of coverage as provided under subsection 599.512 (b).

(2) Upon establishment of entitlement to temporary disability compensation and his or her election to supplement such compensation with sick leave or vacation, the employee shall be entitled to receive payment of the employer's contribution for the period of adjudication, and deduction of the employee's contributions from payroll and payment of the employer's contributions shall continue thereafter so long as supplemental payments permit deduction of the full contribution of the employee.

NOTE: Authority cited: Sections 22794 and 22796, Government Code. Reference: Sections 22870–22899, Government Code.

HISTORY

1. Amendment of subsection (c) filed 7–5–74 as an emergency; effective upon filing (Register 74, No. 27) For prior history, see Register 72, No. 24.
2. Certificate of Compliance filed 9–6–74 (Register 74, No. 36).
3. Amendment filed 6–27–80; designated effective 8–1–80 (Register 80, No. 26).
4. Amendment of subsections (b) and (c) filed 6–9–86; effective thirtieth day thereafter (Register 86, No. 24).
5. Change without regulatory effect amending NOTE filed 10–31–2006 pursuant to section 100, title 1, California Code of Regulations (Register 2006, No. 44).

§ 599.513. Public Employees' Contingency Reserve Fund.

(a) For all plans approved or contracted for under this part, there shall be established a Public Employees' Contingency Reserve Fund in accordance with Section 22910 of the Public Employees' Medical and Hospital Care Act.

(b) Contribution shall be made by the employers during each calendar year to the Public Employees' Contingency Reserve Fund on account of each approved or contracted plan, in the amount authorized by law.

(c) The contributions made to the Contingency Reserve Fund in (b), above, shall not be used for administrative expense purposes. They may be utilized to defray increases in future rates, to reduce the contributions of employees and annuitants and the employers, or to increase the benefits provided by any plan to the extent that amounts in the Fund are derived from that plan, upon determination by the Board.

NOTE: Authority cited: Sections 22796, 22800 and 22831, Government Code. Reference: Sections 22870, 22885, 22890, 22901, 22910 and 22913, Government Code.

HISTORY

1. Amendment filed 7–31–68 as an emergency; effective upon filing (Register 68, No. 29). For prior history, see Register 65, No. 20.
2. Certificate of Compliance—Section 11422.1, Gov. Code, filed 11–27–68 (Register 68, No. 45).
3. Amendment of subsection (a), (b), (d)(1) and (d)(3) filed 6–15–79; designated effective 8–1–79 (Register 79, No. 24).
4. Amendment filed 6–27–80; designated effective 8–1–80 (Register 80, No. 26).
5. Amendment filed 6–9–86; effective thirtieth day thereafter (Register 86, No. 24).
6. Change without regulatory effect amending subsection (a) and NOTE filed 10–31–2006 pursuant to section 100, title 1, California Code of Regulations (Register 2006, No. 44).

§ 599.514. Application for Approval of Major Medical Plans Offered by Employee Organizations.

NOTE: Authority cited: Sections 20120 and 22775, Government Code. Reference: Sections 22775 and 22776, Government Code.

HISTORY

1. Amendment filed 7–5–74 as an emergency; effective upon filing (Register 74, No. 27).
2. Certificate of Compliance filed 9–6–74 (Register 74, No. 36).
3. Repealer of subsection (c) and renumbering of subsection (d) filed 6–15–79; designated effective 8–1–79 (Register 79, No. 24).
4. Repealer filed 6–9–86; effective thirtieth day thereafter (Register 86, No. 24).

§ 599.515. Contracting Agency Participation.

(a) Resolution. The resolution of the governing board of a contracting agency electing to be subject to the Public Employees' Medical and Hospital Care Act shall be filed with the Health Benefits Division of the Public Employees' Retirement System. If such resolution is filed with the Health Benefits Division on or before the tenth day of any month, the contracting agency and its employees and annuitants will become subject to the Act on the first day of the following month. The effective date of participation where the resolution is received in the Health Benefits Division after the tenth day of any month shall be at midnight of the last day of the following month. The resolution shall designate an officer or employee of the agency who shall be responsible for distribution, receipt and forwarding to the Health Benefits Division enrollment forms for its employees and annuitants, the filing of reports and the transmission of contributions.

A resolution filed with the Health Benefits Division may be revoked by the filing of a resolution of the governing board in the Health Benefits Division no less than ninety days prior to the effective date specified in the resolution electing to be subject to the Public Employees' Medical and Hospital Care Act.

(b) Reports. The agency shall file in the Health Benefits Division on or before the tenth day of each month such reports covering the employees and annuitants enrolled as of the first day of the month as the Board may require, and the total contributions due for each. The report shall be accompanied by payment of the total of such contributions for employees and the employer contributions due for annuitants of the agency enrolled under the program and the employer contribution for administrative costs and the Public Employees' Contingency Reserve Fund.

(c) Enrollment. The contracting agency shall make available to its employees and annuitants information concerning health benefit plans and procedures for enrollment and the enrollment forms prescribed by the Board. It shall cause all properly executed enrollment forms to be transmitted promptly to the Health Benefits Division.

(d) Delinquency. The Executive Officer of the Board, upon failure of a contracting agency to perform any act required by the Meyers–Geddes State Employees' Medical and Hospital Care Act or these rules, shall on behalf of the Board, make demand for performance of such act on the agency pursuant to Section 22939 of the Meyers–Geddes State Employees' Medical and Hospital Care Act. If such demand is not satisfied, the Executive Officer shall refer the matter to the Board at its next meeting.

(1) The contributions required of a contracting agency, along with contributions withheld from salaries of its employees, shall be forwarded monthly, no later than the 10th day of the month for which the contribution is due.

(2) Interest on late payments:

(A) If a public agency fails to pay contributions due within the prescribed time, interest shall be charged upon the amount due from the due date until received by the System in Sacramento.

(B) The rate of interest to be charged shall be equal to the short–term interest rate for the coverage month due.

(3) Cost assessment for late reporting:

(A) If a public agency fails to file a remittance report as required by these regulations within the time period set forth, an assessment to recover the cost of follow–up and special accounting of $25.00 for each report shall be made.

(B) If, in the opinion of the Executive Officer, such assessment is insufficient to meet the added costs because of special circumstances, he/she shall determine such costs and make an appropriate supplemental assessment.

(4) Time extension:

(A) A reasonable extension of time for filing remittance reports may be granted by the Executive Officer or designee whenever good cause exists.

(e) Termination. A contracting agency may terminate its participation under the Public Employees' Medical and Hospital Care Act by filing with the Board a resolution passed by a majority vote of its governing body. The resolution electing to terminate must be filed with the Health Benefits Division of the Public Employees' Retirement System no later than 60 days after the Board of Administration approves and announces the health plan premium rates for the following year. The termination becomes effective at the end of the current contract year. The election to terminate is irrevocable after the filing of the resolution, and a resolution electing to be subject to the Public Employees' Medical and Hospital Care Act may not be filed thereafter within five years of the termination date.

NOTE: Authority cited: Sections 20121, 22794, 22796, 22800, 22830, 22831 and 22846(a), Government Code. Reference: Sections 22901 and 22922–22939, Government Code.

HISTORY

1. Amendment of subsection (e) filed 8–5–76; effective thirtieth day thereafter (Register 76, No. 32). For prior history, see Register 75, No 12.
2. Amendment of subsections (a), (b) and (c) filed 6–27–80; designated effective 8–1–80 (Register 80, No. 26).
3. Amendment filed 6–9–86; effective thirtieth day thereafter (Register 86, No. 24).
4. Amendment of subsection (e) filed 4–3–2003 as an emergency; operative 4–3–2003 (Register 2003, No. 14). A Certificate of Compliance must be transmitted to OAL by 8–1–2003 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 4–3–2003 order transmitted to OAL 7–9–2003 and filed 8–18–2003 (Register 2003, No. 34).
6. Amendment of subsection (e) filed 8–4–2004; operative 8–4–2004 pursuant to Government Code section 11343.4 (Register 2004, No. 32).
7. Change without regulatory effect amending subsection (d) and NOTE filed 10–31–2006 pursuant to section 100, title 1, California Code of Regulations (Register 2006, No. 44).

§ 599.516. Payment of Surcharges for Late Enrollment in Medicare Part B.

(a) As used in this section and Government Code section 22831(b):

(1) "Surcharge for late enrollment in Part B of Medicare" means the Part B penalties for late enrollment, exclusive of the Part B premium and interest or penalties for the late payment of premiums. At the discretion of the Board, Part B penalties may be paid directly to the Medicare program or annuitants may be reimbursed for the costs of their Part B penalties.

(2) "Annuitants" means annuitants and their family members.

(3) "Medicare eligible annuitants" means those annuitants and their family members who (a) are enrolled in a basic health benefits plan, (b) are eligible for Part A of Medicare without cost, (c) turned 65 between January 1, 1985 and June 30, 2005, and (d) have not previously enrolled in Part B of Medicare.

(4) "Adverse selection" means that the costs of covering Medicare eligible annuitants in a particular basic plan results in higher premiums for all members of that plan.

(5) "Less costly" means one of the following:

(A) The reduction in a carrier's basic plan premium and resulting savings from moving a Medicare eligible annuitant into the carrier's Medicare plan are greater than an amount equal to the costs of that annuitant's Part B penalties and the employer's mandatory contribution for enrollment in the carrier's Medicare plan. For purposes of this section, the employer's mandatory contribution shall include all amounts that the employer would be required to pay pursuant to Government Code section 22879.

(B) In the case of a self–funded plan administered by the Board, the costs of medical and pharmaceutical claims paid from the Health Care Fund on behalf of a Medicare–eligible annuitant have been, and are projected to be, an amount greater than the Part B penalties for that annuitant and the claim costs that would be paid by the Health Care Fund if the annuitant were enrolled in the plan's Medicare supplement.

(6) "Defined class of Medicare eligible annuitants" means a specific category or group of Medicare eligible annuitants identified or established at the discretion of the Board.

(7) "Determination" means an evaluation and decision made by the Board pursuant to these regulations and Section 22831(b) as to whether (a) adverse selection due to the enrollment of Medicare eligible annuitants has impacted a basic health benefits plan contracted for or approved by the Board and (b) the payment of the Part B penalties for the Medicare eligible annuitant(s) enrolled in that basic plan and their enrollment in a Medicare health benefits plan would be less costly than continued enrollment in the basic plan. An affirmative determination shall be referred to as a determination of cost savings.

(8) "CMS" means the Centers for Medicare and Medicaid Services, the federal agency which administers the Medicare program.

(b) If the Board makes a determination of cost savings with respect to a Medicare eligible annuitant or defined class of Medicare eligible annuitants enrolled in a basic health benefits plan, the Board may seek funding for, or otherwise arrange for, payment of the Part B penalties on behalf of those annuitants.

(c) Determinations will be specific to a designated basic health benefits plan and the costs of the Part B penalties will be based on CMS Medicare eligibility data. At its discretion, the Board may make determinations hereunder on an individual basis or for a defined class of Medicare eligible annuitants. Nothing in this section shall be construed as requiring the Board to undertake or make a determination with respect to a particular basic health benefit plan, individual annuitant, or group of annuitants.

(d) Except as specifically provided herein and approved by the Board, neither the California Public Employees' Retirement System nor any employer or other entity shall have any obligation to pay Part B penalties or reimburse individual annuitants for the costs of such penalties.

(e) Unless otherwise provided by law, the California Public Employees' Retirement System shall not be financially liable for the payment of Part B penalties.

(f) Neither the employer nor any other entity which funds the payment of Part B penalties pursuant to this section shall have any obligation to continue to pay, or fund the payment of, Part B penalties on behalf of any annuitant or family member in the event that:

(1) Funding is not available for payment of Part B penalties; or

(2) The Board determines that payment of the Part B penalties and the employer's mandated contribution is no longer less costly than enrollment in a basic health benefits plan; or

(3) The annuitant or family member, once enrolled in Medicare Part B, fails to pay the Part B premiums or otherwise fails to maintain continuous coverage under Part B.

(g) A Medicare Part B Penalty Reimbursement Program is hereby established for the payment or reimbursement of the penalties for late enrollment in Medicare Part B. If the Board makes a determination of cost–savings with respect to a Medicare eligible annuitant or defined class of Medicare eligible annuitants, each annuitant shall:

(1) Enroll in the Part B Penalty Reimbursement Program.

(2) Enroll in Medicare Part B at the earliest possible date, but no later than the end of the current Part B open enrollment period or, if the open enrollment period has closed, the next Part B open enrollment.

(3) Maintain continuous enrollment in Part B of Medicare and pay all Part B premiums when due. In the event that the program elects to reimburse the program participants for the costs of the Part B penalties rather than paying those penalties directly to Medicare, the annuitant must also timely pay all Part B penalties.

(4) Enroll in a Medicare health benefits plan approved or contracted for by the Board effective as of the date that Part B coverage commences.

(h) A Medicare Part B Penalty Reimbursement Program participant who fails to maintain Medicare Part B coverage, including due to a failure to timely pay the Part B premium and all penalties that are the responsibility of the participant, will not be eligible to re–enroll in a basic plan and may be required to reimburse the Part B penalties previously paid on his or her behalf. Termination of Medicare coverage for failure to pay the Part B premiums shall not constitute an involuntary termination of Medicare benefits under section 599.502(f)(12). In the event that the annuitant later re–enrolls in Part B, he or she will not be eligible to re–enroll in the

program unless it is determined that there would be cost savings. Penalties and costs associated with lapse or cancellation of, and subsequent re-enrollment in, Part B of Medicare will not be reimbursed.

(i) Any Medicare eligible annuitant who is included in a cost savings determination made by the Board and who, after adequate notice from the Board of his or her right to enroll in the Part B Penalty Program, refuses to enroll in Medicare Part B and a Medicare health benefits plan approved or contracted for by the Board, shall no longer be eligible for continued enrollment in a basic health benefits plan.

NOTE: Authority cited: Sections 22794, 22796 and 22831(b), Government Code. Reference: Section 22831(b), Government Code.

HISTORY

1. New section filed 1-15-2004 as an emergency; operative 1-15-2004 (Register 2004, No. 3). A Certificate of Compliance must be transmitted to OAL by 5-14-2004 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 1-15-2004 order, including amendment of subsections (a)(5)(A) and (h), transmitted to OAL 5-13-2004 and filed 6-28-2004 (Register 2004, No. 27).
3. Change without regulatory effect amending subsections (a), (a)(5)(A) and (a)(7) and amending NOTE filed 10-31-2006 pursuant to section 100, title 1, California Code of Regulations (Register 2006, No. 44).

§ 599.517. Termination of Enrollment in Basic Health Benefits Plan for Failure to Enroll In Part A and Part B of Medicare.

Except as otherwise provided under federal law or regulation, specified employees, annuitants and their family members who become Medicare-eligible, as defined below, may not be enrolled in a basic health benefits plan. Failure of a Medicare-eligible basic plan member to enroll in Part B of Medicare and in a Medicare Plan will result in termination of basic plan coverage.

(a) As used in this section and in Government Code section 22844:

(1) "Post-1997 Basic Health Plan Enrollees" means those annuitants and their family members who (a) have been continuously enrolled in a basic health benefits plan on or after January 1, 1998, and (b) turned 65 on or after January 1, 1998 and before January 1, 2005.

(2) "Post-2000 CSU Basic Health Plan Enrollees" means those annuitants of the California State University and their family members who (a) have been continuously enrolled in a basic health benefits plan on or after January 1, 2001, and (b) turned 65 on or after January 1, 2001 and before January 1, 2005.

(3) "Prospective Medicare Beneficiary" means an annuitant, employee or family member who is enrolled in a basic health benefits plan and, at the time of notification hereunder, is within the Medicare Initial Enrollment Period.

(4) "Medicare-Eligible" means eligible for Medicare Part A without cost and Part B.

(5) "Medicare Plan" means a Medicare supplement or Medicare-risk health benefits plan approved or contracted for by the board.

(6) "Deferral of Part B Enrollment" means deferral of Part B enrollment by a Medicare-eligible state or a contracting agency employee who, pursuant to federal law and regulations, has deferred enrollment in Part B of Medicare because he or she is actively employed and covered by a basic health benefits plan by virtue of that employment.

(b) Enrollment and continuation in a basic health benefits plan.

(1) Except as set forth below, Post-1997 Basic Health Plan Enrollees, Post-2000 CSU Basic Health Plan Enrollees, and Prospective Medicare Beneficiaries who are Medicare-eligible may not continue to be enrolled in a basic health benefits plan.

(2) A Medicare-eligible individual who applies for initial enrollment in a basic health benefits plan, or re-enrollment after a break in coverage, shall not be permitted to enroll in a basic plan notwithstanding the fact that he or she was enrolled in an employer-sponsored basic health plan prior to, or on the date of, the application for enrollment.

(3) A Medicare-eligible state or contracting agency employee who has deferred his or her enrollment in Part B, may continue to be enrolled in a basic health benefits plan until the earlier of retirement or termination of employment. Such employee must notify the Board immediately upon termination of his or her deferred status and must enroll in Part B of Medicare during his or her special enrollment period.

(c) Notice of Requirement to Enroll in Medicare.

(1) Post-1997 Basic Health Plan Enrollees and Post-2000 CSU Basic Health Plan Enrollees. No later than December 1, 2004, the Board shall provide notice to Post-1997 Basic Health Plan Enrollees and Post-2000 CSU Basic Health Plan Enrollees of their requirement to enroll in Part B of Medicare. This notice shall provide that (a) if they are Medicare-eligible they may not remain in a basic plan, (b) if they are eligible for Part A of Medicare without cost, they must enroll in Part B of Medicare and in a Medicare Plan in order to retain health plan coverage; and (c) the failure to provide the board with satisfactory evidence of enrollment in Part B, ineligibility for Part A without cost, or deferral of Part B enrollment will result in the termination of their basic plan enrollment.

(2) Prospective Medicare Beneficiaries. Commencing four (4) months prior to a Prospective Medicare Beneficiary's 65th birth month, the Board shall provide notice of the requirement to enroll in Medicare. This notice shall inform the Prospective Medicare Beneficiary that if he or she is Medicare-eligible, he or she may not remain in a basic health benefits plan and must timely enroll in Part B of Medicare and a Medicare Plan in order to retain health plan coverage. The notice shall also inform the Prospective Medicare Beneficiary that failure to provide the board with satisfactory evidence of enrollment in Part B, ineligibility for Part A of Medicare without cost, or deferral of Part B enrollment will result in the termination of his or her basic plan enrollment.

(d) Termination of enrollment in a basic health benefits plan.

(1) On or before March 31, 2005, Post-1997 Basic Health Plan Enrollees and Post-2000 CSU Basic Health Plan Enrollees shall provide the Board with satisfactory evidence of application for enrollment in Part B of Medicare during the 2005 Medicare open enrollment period, ineligibility for enrollment in Part A of Medicare without cost, or deferral of Part B enrollment. Failure to do so will result in termination of basic plan enrollment effective April 1, 2005.

(2) On or before June 1, 2005, a Post-1997 Basic Health Plan Enrollee or a Post-2000 CSU Basic Health Plan Enrollee who applied to enroll in Part B of Medicare during the 2005 open enrollment period shall provide the Board with satisfactory evidence of enrollment in Part B of Medicare and an application for enrollment in a Medicare plan. Failure to do so will result in termination of basic plan enrollment effective July 1, 2005.

(3) The basic plan enrollment of a Prospective Medicare Beneficiary who fails to provide to the Board satisfactory evidence of enrollment in Part B of Medicare, ineligibility for Part A of Medicare without cost, or deferral of Part B enrollment by the last day of his or her birth month, will be terminated effective the first of the subsequent month.

(4) To the full extent permitted by law, the Board shall have no liability for any costs, losses or damages incurred by any person as a result of, or arising from or related to, the termination of basic health benefits plan coverage in accordance with this section.

(e) Enrollment in a Supplemental Plan.

(1) Post-1997 Basic Health Plan Enrollees, Post-2000 CSU Basic Health Plan Enrollees, and Prospective Medicare Beneficiaries who are Medicare-eligible may enroll in a Medicare Plan by submitting an application to the Board and proof of enrollment in Parts A and B of Medicare. Enrollment in the Medicare Plan shall be effective on the date Medicare coverage became effective or the first of the month following receipt of the application, whichever is later.

(2) Notwithstanding (1) above, a person whose coverage has been terminated pursuant to subsection (d) and who subsequently submits evidence of enrollment in Parts A and B of Medicare may only enroll in a Medicare Plan under the following conditions:

(A) If the application and proof of enrollment in Parts A and B of Medicare are submitted within 90 days of the date that basic plan coverage terminated, enrollment in the Medicare Plan shall be retroactive to the effective date of Medicare coverage or a date 90 days prior to the submission of evidence of Medicare enrollment, whichever is later.

(B) If the application and proof of enrollment in Parts A and B of Medicare are submitted more than 90 days after the date that basic plan coverage terminated, the effective date of enrollment shall be the first of the month following receipt of the application or, if applicable, the effective date of coverage under open enrollment.

(f) Enrollment in a basic health benefits plan after termination.

If a person whose basic plan coverage has been terminated pursuant to subsection (d) subsequently submits satisfactory written confirmation that he or she is either not eligible for Part A of Medicare without cost or has deferred enrollment in Part B of Medicare, he or she may enroll in a basic health benefits plan under the following conditions:

(1) If the documentation is received by the Board within 90 days of the date that coverage terminated, re-enrollment in a basic plan shall be retroactive to the date coverage terminated.

(2) An application for enrollment received more than 90 days after basic plan coverage has terminated may be submitted only during a CalPERS Health Benefits Open Enrollment period.

(g) Request for administrative review — termination of enrollment in basic health benefits plan.

(1) A person who has been notified that his or her enrollment in a basic plan has, or will be, terminated pursuant to subsection (d), may request an administrative review of the termination. The filing of a request for administrative review shall not delay the termination of basic plan enrollment.

(2) A request for administrative review must be filed with the Health Branch Assistant Executive Officer within 90 days of the termination date or the date of the notice of termination, whichever is later. The request for administrative review shall be in writing, state the grounds on which it is requested, the relief that is sought, and include all supporting evidence.

(3) The Health Branch Assistant Executive Officer or his or her designee shall acknowledge the request within 15 days of receipt. The Health Branch Assistant Executive Officer or his or her designee shall review the request and may request additional documentation. Written notification of the decision shall be mailed within 60 days of receipt of all pertinent information.

(h) Request for administrative review — effective date of Medicare Plan enrollment.

(1) A person whose enrollment in a Medicare Plan is delayed pursuant to subsection (e)(2)(B) due to failure to timely submit evidence of enrollment in Part B of Medicare, may seek administrative review of the basis for the delayed effective date. The filing of a request for administrative review shall not delay the termination of basic plan enrollment.

(2) A request for administrative review must be filed with the Health Branch Assistant Executive Officer within 90 days of the notice of the effective date of enrollment in the Medicare Plan. The request for administrative review shall be in writing, state the grounds on which it is requested, the relief that is sought, and include all supporting evidence.

(3) The Health Branch Assistant Executive Officer or his or her designee shall acknowledge the request within 15 days of receipt. The Health Branch Assistant Executive Officer or his or her designee shall review the request and may request additional information. Written notification of the decision shall be mailed within 60 days of receipt of all pertinent information.

NOTE: Authority cited: Sections 22794 and 22796, Government Code. Reference: Section 22844, Government Code.

HISTORY

1. New section filed 3-22-2004 as an emergency; operative 3-22-2004 (Register 2004, No. 13). A Certificate of Compliance must be transmitted to OAL by 7-20-2004 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 3-22-2004 order, including amendment of section, transmitted to OAL 7-20-2004 and filed 8-31-2004 (Register 2004, No. 36).
3. Change without regulatory effect amending subsection (a) and NOTE filed 10-31-2006 pursuant to section 100, title 1, California Code of Regulations (Register 2006, No. 44).

Article 2. Prefunding Plan for Health Care Coverage for Annuitants

§ 599.550.

For purposes of this article:

(a) "Health care coverage for annuitants" means postemployment healthcare benefits and other postemployment benefits provided to terminated or retired employees and their dependents and beneficiaries. For purposes of this definition, "postemployment healthcare benefits" means medical, dental, vision, and other health-related benefits, and "other postemployment benefits" means postemployment benefits other than pension benefits, including life insurance, disability, and long-term care benefits."

(b) "Participating employer" means an employer that has elected to participate in the prefunding plan and that files a resolution with CalPERS as provided in §22922, which resolution sets forth the terms and conditions of the participating employer's participation in the prefunding plan.

(c) "Prefunding plan" means the Annuitants' Health Care Coverage Fund that is a trust fund intended to meet the requirements of Section 115 of the Internal Revenue Code and that is established pursuant to Government Code section 22940 to provide healthcare coverage for annuitants.

NOTE: Authority cited: Sections 22796 and 22922, Government Code. Reference: Section 22940, Government Code.

HISTORY

1. New article 2 (sections 599.550-599.554) and new section filed 1-26-2007; operative 1-26-2007 pursuant to Government Code section 11343.4 (Register 2007, No. 4).

§ 599.552.

(a) The board may, in its discretion and upon terms and conditions set by the board, authorize an employer to participate in the prefunding plan.

(b) The governing body of a participating employer shall enter into a contract with the board, setting forth the terms and conditions of the employer's participation in the prefunding plan. The contract may be in the form of a resolution adopted pursuant to Section 22922.

(c) Upon approval by the board, an employer subject to the Public Employees' Medical and Hospital Care Act may file a new resolution with the board or amend an existing resolution on file with the board, to allow the employer to become a participating employer.

NOTE: Authority cited: Sections 22796 and 22922, Government Code. Reference: Sections 22922, 22940 and 22942, Government Code.

HISTORY

1. New section filed 1-26-2007; operative 1-26-2007 pursuant to Government Code section 11343.4 (Register 2007, No. 4).

§ 599.553.

(a) The terms and conditions of the contract or resolution for participation in the prefunding plan shall include, but not be limited to, the following:

(1) Disbursements from the prefunding plan;

(2) The methodology and assumptions used to calculate the actuarial accrued liability for health care coverage for annuitants;

(3) The method of payments to and disbursements from the prefunding plan;

(4) The frequency and content of reports from the participating employer to the prefunding plan;

(5) The frequency and content of reports from the prefunding plan to the participating employer;

(6) The allocation of prefunding plan investment income to the participating employer;

(7) The allocation of administrative costs and expenses of the prefunding plan to the participating employer;

(8) The circumstances and requirements for transfer of assets into or out of the prefunding plan, provided that any such transfers:

(A) must be in accordance with the terms of the contract or resolution, and

(B) must satisfy the requirements of Section 115 of the Internal Revenue Code.

(9) The board may terminate the participation of a participating employer in the prefunding plan if:

(A) a participating employer elects to terminate participation in the prefunding plan;

(B) the board finds that the participating employer has failed to satisfy the terms and conditions required by this article, by board rules or regulations, or by the contract or resolution approved by the governing body of the participating employer and filed with the board; or

(C) the board terminates the prefunding plan.

(b) If participation in the prefunding plan terminates for a reason described in subdivision (a)(9)(A) or (B), then the assets attributable to the contributions by that employer shall remain in the prefunding plan for the continued payment of postemployment health care coverage for annuitants and the costs of administration, pursuant to the terms and conditions of participation established by the board and as agreed to by the employer.

(c) If participation in the prefunding plan is terminated by the board as described in subdivision (a)(9)(C), then the assets attributable to the contributions by participating employers shall be paid in the following order:

(1) The board shall retain for disbursement to annuitants an amount sufficient to pay the health care benefits to annuitants for current and future annuitants.

(2) The board shall retain for payment an amount sufficient to pay reasonable administrative costs.

(3) After the amounts described in paragraphs (1) and (2) have been retained or disbursed, the board shall pay to each participating employer in the prefunding plan on the date of termination, a pro rata share of the remaining assets in the prefunding plan. The board shall determine that pro rata share based on the ratio that the participating employer's accumulated contributions bear to the accumulated contributions of all participating employers.

NOTE: Authority cited: Sections 22796 and 22922, Government Code. Reference: Sections 22922, 22940 and 22942, Government Code.

HISTORY

1. New section filed 1–26–2007; operative 1–26–2007 pursuant to Government Code section 11343.4 (Register 2007, No. 4).

§ 599.554.

The board shall determine the amount of administrative costs and expenses of the prefunding plan to be paid to the board by each participating employer in accordance with the terms of the contract or resolution.

NOTE: Authority cited: Sections 22796 and 22922, Government Code. Reference: Sections 22922 and 22940, Government Code.

HISTORY

1. New section filed 1–26–2007; operative 1–26–2007 pursuant to Government Code section 11343.4 (Register 2007, No. 4).

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Division 1. Administrative Personnel

Chapter 3. Department of Personnel Administration

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Chapter 3. Department of Personnel Administration

EDITORIAL NOTE: The Department of Personnel Administration (DPA) succeeded to and became vested with the authority of the State Personnel Board (SPB), the State Board of Control (BOC), the Department of General Services (DGS) and the Department of Finance (DOF) with respect to the nonmerit aspects of the state personnel system on May 1, 1981. (Governor's Reorganization Plan No. 1 of 1981, Codified by Statutes of 1981, Chap. 230.) Pursuant to Government Code Section 19815.4(d): "All regulations relating to personnel administration heretofore adopted pursuant to this part by the State Personnel Board, State Board of Control, Department of General Services, and the Department of Finance, and in effect on the operative date of this part, shall remain in effect and shall be fully enforceable unless and until readopted, amended, or repealed by the director [of DPA]." Further, the DPA serves as the Governor's representative for collective bargaining and other labor relations purposes under the State Employer–Employee Relations Act (California Government Code Section 3512 et seq.).

Most of the pertinent SPB, BOC, DGS and DOF regulations now administered by DPA pursuant to Government Code Section 19815.4(d) have been transferred to this chapter (Title 2, Division 1, Chapter 3); some have not yet been included herein. Citations for the sections not yet transferred are set forth in the Detailed Analysis (below) in parentheses following the section number reserved for the parallel DPA provisions which will be incorporated as appropriate at the completion of rulemaking proceedings necessitated by Government Code Sections 11340 et seq.

Subchapter 1. General Civil Service Rules

Article 1. Definitions

§ 599.600. Definitions.

Unless context requires otherwise, the definitions hereinafter set forth govern the construction of these rules.

NOTE: Authority cited: Sections 19815.4(d) and 19816, Government Code. Reference: Section 18520, Government Code.

HISTORY

1. New Subchapter 1 heading and new Article 1 (Sections 599.600–599.611) filed 9–6–83; effective thirtieth day thereafter (Register 83, No. 37). For prior history of Chapter 3, see Registers 83, No. 17 and 82, No. 42.

CROSS REFERENCE: See Title 2, Division 1, Chapter 1, Subchapter 1, Sections 1–8.

§ 599.601. Act.

"Act" means Part 2.6 of Division 5 of Title 2 of the Government Code of the State of California.

NOTE: Authority cited: Sections 19815.4(d) and 19816, Government Code. Reference: Part 2.6 (commencing with Section 19815), Division 5, Title 2, Government Code.

§ 599.602. Agency.

"Agency" includes "department," "board," "office," "authority," "commission," and every other governmental unit.

NOTE: Authority cited: Sections 19815.4(d) and 19816, Government Code. Reference: Section 19820, Government Code.

§ 599.603. Appointing Power.

"Appointing Power" means a person or group defined by statute as having authority to make appointments to positions in the state civil service. This in no way affects the delegation of authority, as defined in Section 7 of the Government Code.

NOTE: Authority cited: Sections 19815.4(d) and 19816, Government Code. Reference: Section 18524, Government Code.

§ 599.604. Department.

"Department" means the Department of Personnel Administration of the State of California.

NOTE: Authority cited: Sections 19815.4(d) and 19816, Government Code. Reference: Section 19815(a), Government Code.

§ 599.605. Employee.

"Employee" includes every officer and employee subject to the Act or these regulations.

NOTE: Authority cited: Sections 19815.4(d) and 19816, Government Code. Reference: Section 19815(d), Government Code.

§ 599.606. Director.

"Director" means the Director of the Department of Personnel Administration.

NOTE: Authority cited: Sections 19815.4(d) and 19816, Government Code. Reference: Section 19815(b), Government Code.

§ 599.607. Use of Month or Calendar Month.

"Month" means a calendar month unless otherwise specified. In the application of Government Code Sections 19856.1, 19858.1, 19859, 19861, 19863.1, 19991.7, 19996, 19997.3 and Sections 599.737, 599.738, 599.739, 599.740, 599.746, 599.747, 599.787, 599.791 and 599.840 relating to the earning of sick leave, paid educational leave, vacation allowances, and seniority, month or calendar month shall mean the monthly pay period as prescribed by the Department of Finance.

NOTE: Authority cited: Sections 19815.4(d) and 19816, Government Code. Reference: Section 18538.1, Government Code.

§ 599.608. Qualifying Monthly Pay Period.

Except as provided in Sections 599.609 and 599.776.1(b), in the application of Government Code Sections 19143, 19849.9, 19856.1, 19858.1, 19859, 19861, 19863.1, 19997.4, 599.682, 599.683, 599.685, 599.687, 599.737, 599.738, 599.739, 599.740, 599.746, 599.747, 599.787, 599.791, 599.840 and 599.843, an employee who has 11 or more working days of service in a monthly pay period shall be considered to have a complete month, a month of service, or continuous service. In the application of Government Code Section 19837, an employee shall be considered to have a month of state service if the employee either: (1) has had 11 or more working days of service in a monthly pay period; or (2) would have had 11 or more working days of service in a monthly pay period but was laid off or on a leave of absence for the purpose of lessening the impact of an impending layoff.

Except for absences that are counted under this section, absences from state service resulting from a temporary or permanent separation for more than 11 consecutive working days which fall into two consecutive qualifying pay periods shall disqualify one of the pay periods. Absences from the payroll that may be counted as state service under this section shall be counted only at the request of the employee and shall not exceed 12 months of state service regardless of the number or combinations of absences involved.

Service or credits earned on or after January 1, 1969, shall be accumulated under the provisions of this section. Service or credits prior to that date shall be accumulated under the rules in effect on December 31, 1968, except that in the application of Government Code Section 19997.4 and Sections 599.837 and 599.843 all seniority credit shall be accumulated under the provisions of this section. In either instance, service or credit may be accumulated during appropriate absences, as described in this section, and the amount accumulated will be based on the time the employee would have worked if not absent.

NOTE: Authority cited: Sections 19815.4(d) and 19816, Government Code. Reference: Sections 18538.1 and 19997.4, Government Code.

HISTORY

1. Amendment filed 12–16–94; operative 7–1–94. Submitted to OAL for printing only pursuant to Government Code section 3539.5 (Register 94, No. 50).

§ 599.609. Qualifying Monthly Pay Period for Hourly and Daily Rate Employees.

In the application of Section 599.608, hourly or daily rate employees working in a state agency in which the full–time workweek is 40 hours who earn the equivalent of 160 hours of service in a monthly pay period

or accumulated pay periods shall be considered to have a complete month, a month of service, or continuous service. The amount of accumulated service required for a complete month of service shall be proportionately adjusted for work in agencies in which the full–time workweek is other than 40 hours. Hours or days worked in excess of 20 days in a month by pay period shall not be counted or accumulated. When an employee has a break in service or changes to full time, any combination of time worked which does not equal one qualifying month of full–time service shall not be accumulated or counted.

NOTE: Authority cited: Sections 19815.4(d) and 19816, Government Code. Reference: Sections 18538.1, 19997 and 19997.4, Government Code.

§ 599.610. Regulations.

"Regulations" means the regulations of the Department of Personnel Administration.

NOTE: Authority cited: Sections 19815.4(d) and 19816, Government Code. Reference: Section 3532, Government Code.

§ 599.611. Good Faith.

NOTE: Authority cited: Sections 19815.4(d) and 19816, Government Code. Reference: Sections 19257 and 19257.5, Government Code.

HISTORY

1. Repealer filed 11–17–87; operative 12–17–87 (Register 87, No. 48).

§ 599.612. (Reserved)

§ 599.613. (Reserved)

§ 599.614. (Reserved)

Article 2. Traveling Expenses

§ 599.615. Scope.

(a) It is the purpose of this Article to provide reimbursement for the necessary out–of–pocket expenses incurred by state officers and employees because of travel on official state business. Each state agency is charged with the responsibility of determining the necessity for, and the method of, travel, provided, however, that once such necessity has been determined, reimbursement shall be governed by these sections. It is the intent of the Department of Personnel Administration that state agencies shall not have discretion to provide reimbursement at a lower amount than contained in Department sections unless such discretion is specifically mentioned. Language of this article providing a specific time, distance, or amount shall be rigidly interpreted. Language such as "not more than" or "up to" a specified amount shall be interpreted as a rigid ceiling with departmental discretion below such ceiling.

(b) For the purpose of regulations governing claims for reimbursement an excluded employee is: an employee as defined in Section 3527(b) of the California Government Code (Ralph C. Dills Act): a nonelected officer or employee of the executive branch of government who is not a member of the civil service.

(c) For the purpose of regulations governing claims for reimbursement, a represented employee is defined in Section 3513(c) of the California Government Code (Ralph C. Dills Act).

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19820, Government Code. Reference: Section 11030, Government Code.

HISTORY

1. New section filed 2–9–84 (corrected copy refiled 2–27–84); effective thirtieth day thereafter (Register 84, No. 8).
2. Editorial correction of HISTORY NOTES printed in error in Register 84, Nos. 8 and 12 (Register 84, No. 15).
3. Change without regulatory effect amending section filed 9–11–91 pursuant to section 100, title 1, California Code of Regulations (Register 91, No. 51).

§ 599.615.1. Scope—Excluded Employees.

(a) It is the purpose of this Article to provide and define reimbursement for the actual and necessary out–of–pocket expenses incurred by state officers, employees, and agents because of travel on official state business. Each state agency may determine the time and method of travel, location and lodging. Each State agency shall determine the necessity for travel and that such travel represents the best interest of the State. Once the necessity and method of travel, location and lodging have been determined, reimbursement shall be governed by these sections. The signature of the officer approving travel and payment is certification that the approving party has authorized the travel, that the expenses were incurred in order to conduct official state business and that the items claimed are appropriate and in keeping with these rules. State agencies shall not have discretion to provide reimbursement at a lower amount unless such discretion is specifically authorized by rule. Unless otherwise specified, receipts are required for each item of expense of $25.00 or more.

(b) For the purpose of regulations governing claims for reimbursement an excluded employee is: an employee as defined in Section 3527(b) of the California Government Code (Ralph C. Dills Act): a non–elected officer or employee of the executive branch of government who is not a member of the civil service.

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19820, Government Code. Reference: Section 11030, Government Code.

HISTORY

1. New section filed 12–27–95; operative 1–1–96. Submitted to OAL for printing only pursuant to Government Code section 3539.5 (Register 95, No. 52).

§ 599.616. Definitions.

For the purposes of this Article, the following definitions will apply:

(a) Headquarters. Headquarters shall be established for each state officer and employee and shall be defined as the place where the officer or employee spends the largest portion of his/her regular workdays or working time, or the place to which he/she returns on completion of special assignments, or as the Department of Personnel Administration may define in special situations.

(1) Where an office building or similar definite place constitutes the employee's headquarters, no per diem expenses shall be allowed at any location within 25 miles of said headquarters as determined by the normal commute distance.

(2) Where the major portion of an employee's working time is spent within a specifically assigned or limited geographical area, such as a patrol area or beat where the same routes are traveled frequently and routinely on one–day trips, no per diem expenses shall be allowed at any location within 25 miles from any point in this assigned area as determined by the normal commute distance.

In order to insure equity in special cases, agency heads may disregard this subsection and authorize individual claims based on subsection (1) of this rule.

(3) In cases where adherence to the 25–mile limitation creates an unusual and unavoidable hardship to the officer or employee, exceptions may be granted by the Department of Personnel Administration.

(4) Employees on travel status for less than 24 hours may claim subsistence expenses incurred before or after the regularly scheduled work day in accordance with Section 599.619(a) or the applicable provisions of a Memorandum of Understanding, as appropriate, provided the departure time or return time exceeds the regularly scheduled work day by one hour.

(b) Residence. A place of primary dwelling shall be designated for each state officer and employee. A primary dwelling shall be defined as the actual dwelling place of the employee which bears the most logical relationship to the employee's headquarters and shall be determined without regard to any other legal or mailing address. However, if an employee is temporarily required to dwell away from his/her primary dwelling place due to official travel away from headquarters, and said primary dwelling is either inhabited by his/her dependents or is maintained by the employee at a net monthly expense in excess of $200, such dwelling place may be continued as the employee's designated primary dwelling.

(1) No reimbursement for per diem or other subsistence expenses shall be allowed on the premises of an employee's primary dwelling.

(2) An employee shall have only one dwelling at which travel expenses are prohibited.

(3) When an employee maintains more than one dwelling, meeting the definition of residence set forth in Section 599.616(b) and the employee is required to officially travel to the location of the secondary dwelling, he/she may claim the non–commercial subsistence allowance rates defined in Section 599.619(c) or 599.621(c)(1) as appropriate.

(c) Travel Expenses. Travel expenses include:

(1) Per Diem Expenses. Per diem expenses consist of the charges and attendant expenses for meals and lodging and all charges for personal expenses incurred while on travel status.

(2) Business Expenses. Business expenses consist of the charges for business phone calls and telegrams; emergency clothing, equipment or supply purchases; and all other charges necessary to the completion of official business. Any emergency purchase shall be explained, and if over $25 must be approved by the department head, deputy, or chief administrative officer.

(d) Protective Services. A member of the California State Police assigned as provided by Government Code Section 14613, or a member of the California Highway Patrol assigned to supplement State Police capabilities under Section 14613, may claim subsistence allowance for in–state travel as follows:

(1) If expenses actually incurred by the employee while traveling with the protected individual exceed the per diem allowance authorized for in–state travel, the employee may elect to claim the subsistence allowance authorized by Section 599.619(d) or 599.621(d) as appropriate.

(2) Any expense claim submitted under (1), must contain a certification by the Chief of the California State Police naming the individual being protected and verifying that the travel expenses were incurred while the claimant was assigned to protect said individual.

(3) Claims submitted under this section shall not be subject to the limitations of Section 599.616(a).

NOTE: Authority cited: Sections 19815.4(d), 19816, 19820(a) and 19849.5, Government Code. Reference: Sections 11030 and 14613, Government Code.

HISTORY

1. New section filed 2–9–84 (corrected copy refiled 2–27–84); effective thirtieth day thereafter (Register 84, No. 8).
2. Editorial correction of HISTORY NOTES printed in error in Register 84, Nos. 8 and 12 (Register 84, No. 15).

§ 599.616.1. Definitions—Excluded Employees.

For the purposes of this Article, the following definitions will apply:

(a) Headquarters. Headquarters shall be established by the appointing power for each state officer and employee and shall be defined as the place where the officer or employee spends the largest portion of his/her regular workdays or working time, or the place to which he/she returns upon completion of special assignments, or as the Department of Personnel Administration may define in special situations.

(1) Where an office building or similar definite place constitutes the employee's headquarters, no per diem expenses shall be allowed at any location within 50 miles of said headquarters as determined by the normal commute distance.

(2) Where the major portion of an employee's working time is spent within a specifically assigned or limited geographical area, such as a patrol area or beat where the same routes are traveled frequently and routinely on one–day trips, no per–diem expenses shall be allowed at any location within 50 miles from any point in this assigned area as determined by the normal commute distance.

In order to insure equity in special cases, agency heads may disregard this subsection and authorize individual claims based on subsection (1) of this rule.

(3) In cases where adherence to the 50–mile limitation creates an unusual and unavoidable hardship to the officer or employee, exceptions may be granted by the appointing power.

(4) Employees on travel status for less than 24 hours may claim subsistence expenses incurred before, during, or after the regularly scheduled workday in accordance with Section 599.619(a).

(b) Residence. A place of primary dwelling shall be designated for each state officer and employee. A primary dwelling shall be defined as the actual dwelling place of the employee which bears the most logical relationship to the employee's headquarters and shall be determined without regard to any other legal or mailing address. However, if an employee is temporarily required to dwell away from his/her primary dwelling place due to official travel away from headquarters, and said primary dwelling is either inhabited by his/her dependents or is maintained by the employee at a net monthly expense in excess of $200, such dwelling place may be continued as the employee's designated primary dwelling.

(1) No reimbursement for per diem or other subsistence expenses shall be allowed on the premises of an employee's primary dwelling.

(2) An employee shall have only one dwelling at which travel expenses are prohibited.

(3) When an employee maintains more than one dwelling, meeting the definition of residence set forth in Section 599.616.1(b) and the employee is required to officially travel to the location of the secondary dwelling, he/she may claim reimbursement for actual expenses incurred for meals and incidentals as defined in Section 599.619(a) and in accordance with the rates and timeframes stated therein for short–term travel, or as defined in Section 599.619.1(b) for meals while on a long–term assignment.

(c) Travel Expenses. Travel expenses include:

(1) Meals and Lodging incurred as a result of business travel away from headquarters in order to conduct State business

(2) Transportation expenses incurred in order to conduct State business

(d) Business Expenses. Business expenses consist of the charges for business phone calls and telegrams; emergency clothing, equipment or supply purchases; and all other charges necessary to the completion of official business. Any emergency purchase shall be explained, and if over $25 must be approved by the department head, deputy, or chief administrative officer.

(e) Protective Services. A member of the California Highway Patrol assigned as provided by Government Code Section 14615 may claim subsistence allowance for in–state travel as follows:

(1) If expenses are actually incurred by the employee as a result of traveling with the protected individual exceed the maximum meal and lodging rates authorized in 599.619 for in–state travel, the employee may claim their actual expenses by providing receipts.

(2) Any expense claim submitted under (1), must contain a certification by the Commissioner of the California Highway Patrol naming the individual being protected and verifying that the travel expenses were incurred while the claimant was assigned to protect said individual.

(3) Claims submitted under this section shall not be subject to the limitations of Section 599.616.1(a).

(f) Long Term Assignment. Any assignment of 31 days or more to a given location other than headquarters. A Long Term Assignments is typically given for a project status job that requires the extended presence of an employee for a period in excess of 31 days but is not considered permanent due to the temporary nature of the assignment, the appointment, or scheduled completion date of the project. The employee's return home for weekends or incidental short term travel to another location does not break the continuity of a long term assignment.

NOTE: Authority cited: Sections 19815.4(d), 19816, 19820(a) and 19849.5, Government Code. Reference: Sections 11030 and 14613, Government Code.

HISTORY

1. New section filed 12–27–95; operative 1–1–96. Submitted to OAL for printing only pursuant to Government Code section 3539.5 (Register 95, No. 52).
2. Amendment of subsections (a)(4) and (b)(3) filed 10–28–99; operative 11–2–99. Submitted to OAL for printing only (Register 99, No. 51). At the request of DPA pursuant to Government Code section 3539.5, OAL is directing the printing of this regulation in the CCR. Title 1, CCR, section 6(b)(2)(F)1 defines "print only" regulations as "regulations *adopted pursuant to the requirements of the APA*, but which are expressly exempted by statute from OAL review . . . ." (Emphasis added.) In complying with DPA's request, OAL makes no determination concerning whether or not DPA has met the statutory requirements for adoption of regulations set forth in Government Code sections 11346–11347.3, including but not limited to public notice and comment. See 1998 OAL Determination No. 40 (Department of Personnel Administration, 96–008, December 9, 1998), California Regulatory Notice Register 99, No. 3–Z, January 15, 1999, p. 139, at p. 145; typewritten version, p. 18.

3. Amendment of subsection (b)(3) filed 10-1-2001; operative 10-1-2001. Submitted to OAL for printing only pursuant to Government Code section 3539.5 (Register 2001, No. 46).

§ 599.619. Reimbursement for Meals and Lodging—Excluded Employees.

The employee on travel status shall be reimbursed actual expenses for receipted lodging, and for meals and incidentals as provided in this section, unless directed to travel under the provisions of 599.624.1. Lodging and/or meals provided by the state or included in hotel expenses or conference fees, or in transportation costs such as airline tickets, or otherwise provided shall not be claimed for reimbursement. Snacks and continental breakfasts, such as rolls, juice and coffee, are not considered to be meals. The circumstances of travel will determine the rate allowed.

(a) Short-term Travel. Reimbursement for short-term subsistence will be authorized only when the traveler incurs expenses arising from the use of reasonable, moderately priced commercial lodging and meal establishments, such as hotels, motels, bed and breakfast inns, campgrounds, restaurants, cafes, diners, etc. that cater to the general public. Employees who stay with friends or relatives may claim meals only in accordance with the rates and time frames set forth below. Lodging receipts are required. The short-term rate is intended for trips of such duration that weekly or monthly rates are not obtainable and will be discontinued after the 30th consecutive day assigned to one location unless an extension has been previously documented and approved by the appointing power. In extending short term travel, the appointing power shall consider the expected remaining length of the travel assignment.

(1) In computing reimbursement for continuous short term travel of more than 24 hours and less than 31 consecutive days, the employee will be reimbursed for actual costs up to the maximum allowed for each meal, incidental, and lodging expense for each complete 24 hours of travel, beginning with the traveler's times of departure and return, as follows.

(A) On the first day of travel on a trip of 24 hours or more:

Trip begins at or before 6am:	breakfast may be claimed on the first day
Trip begins at or before 11am:	lunch may be claimed on the first day
Trip begins at or before 5pm:	dinner may be claimed on the first day

(B) On the fractional day of travel at the end of a trip of more than 24 hours:

Trip ends at or after 8am:	breakfast may be claimed
Trip ends at or after 2pm:	lunch may be claimed
Trip ends at or after 7pm:	dinner may be claimed

If the fractional day includes an overnight stay, receipt lodging may be claimed. No meal or lodging expense may be claimed or reimbursed more than once on any given date or during any 24 hour period.

(C) Reimbursement shall be for actual expenses only, subject to the following maximum rates:

Meals:

Breakfast	$ 6.00
Lunch	$10.00
Dinner	$18.00
Incidentals	$ 6.00

Receipts for meals must be maintained by the employee as substantiation that the amount claimed was not in excess of the amount of actual expense. The term incidentals includes but is not limited to expenses for laundry, cleaning and pressing of clothing, and fees and tips for services, such as for porters and baggage carriers. It does not include taxicab fares, lodging taxes or the costs of telegrams or telephone calls.

Lodging:

Statewide, with receipts	Actual up to $84.00 plus tax
When employees are required to do business and obtain lodging in the Counties of Los Angeles and San Diego	Actual lodging up to $110.00 plus tax

When employees are required to do business and obtain lodging in the Counties of Alameda, San Francisco, San Mateo and Santa Clara, actual lodging up to $140 plus tax.

If lodging receipts are not submitted, reimbursement will be for actual expenses for meals/incidentals only at the rates and time frames set forth in this section.

(2) In computing reimbursement for continuous travel of less than 24 hours, actual expenses, up to the maximums in (C) above, will be reimbursed for breakfast and/or dinner and/or lodging in accordance with the following timeframes:

Travel begins at or before 6 a.m. and ends at or after 9 a.m: Breakfast may be claimed.
Travel begins at or before 4 p.m. and ends at or after 7 p.m: Dinner may be claimed.

If the trip of less than 24 hours includes an overnight stay, receipted lodging may be claimed.

No lunch or incidentals may be reimbursed on travel of less than 24 hours.

(b) Long-term Travel. Reimbursement for long-term meals and receipted lodging will be authorized when the traveler incurs expenses in one location comparable to those arising from the use of commercial establishments catering to the long-term visitor. Meals and/or lodging provided by the state shall not be claimed for reimbursement. With approval of the appointing power and upon meeting the criteria in (3) below, an employee on long-term field assignment who is living at the long term location may claim either:

(1) $24.00 for meals and incidentals and up to $24.00 for receipted lodging for travel of 12 hours up to 24 hours; either $24.00 for meals or up to $24.00 for receipted lodging for travel less than 12 hours, or

(2) Reimbursement for actual individual expense, substantiated by receipts, for lodging, utility gas and electricity, up to a maximum of $1130 per calendar month while on the long term assignment, and $10.00 for meals and incidentals, without receipts, for each period of 12 to 24 hours; $5.00 for meals and incidentals for periods of less than 12 hours at the long term location

(3) To claim expenses under either (1) or (2) above the employee must meet the following criteria:

(A) the employee continues to maintain a permanent residence at the primary headquarters and

(B) The permanent residence is occupied by employee's dependents, or

(C) The permanent residence is maintained at a net expense to the employee exceeding $200 per month.

(D) The employee must submit substantiating evidence of these conditions to the appointing power in accordance with its requirements.

(4) Employees who do not meet the criteria to claim (1) or (2) above may claim $12.00 for meals and incidentals and $12.00 for receipted lodging for every 12 to 24 hours at the long term location; $12 for meals OR $12 receipted lodging for periods of less than 12 hours at the long term location.

(5) With approval of the appointing power, the reimbursement of long term lodging may continue when the employee is away from the long term location on short term business travel or other absences from that location as approved by the appointing authority.

(c) Out-of-State Travel. Out-of-state travel is any travel outside the State of California for the purpose of conducting business outside the State of California. For short-term out-of-state travel, employees will be reimbursed for actual lodging expenses, supported by a receipt, and will be reimbursed for meal and incidental expenses as defined in Section 599.619(a). Failure to furnish lodging receipts will limit reimbursement to meals only at the rates specified in (a). Long-term out-of-state travel will be reimbursed according to Section 599.619(c).

(d) Out-of-Country Travel. For short-term out-of-country travel, employees will be reimbursed for actual lodging expenses, supported by a receipt, and will be reimbursed for actual meal and incidental expenses subject to maximum rates in accordance with the published Government meal and incidental rates for foreign travel for the dates of travel. Failure to furnish lodging receipts will limit reimbursement to meals only in accordance with the published Government meal and incidental rates for foreign travel. Long-term out-of-country travel will be reimbursed according to Section 599.619(a) through (c).

(e) Exceptions to reimburse in excess of the maximum lodging rate cited in (a) of this rule may be granted by the Appointing Power only in an emergency, or when there is no lodging available at the State maximum rate or when it is cost effective. The Appointing Power shall document the reasons for each exception and shall keep this documentation on file for three calendar years from the date of the exception.

NOTE: Authority cited: Sections 3539.5, 19815.4(d), 19816 and 19820, Government Code. Reference: Sections 3527(b) and 11030, Government Code.

HISTORY

1. New chapter 3 (sections 599.619–599.745, not consecutive) filed 10–12–82 as an emergency; effective upon filing (Register 82, No. 42). A Certificate of Compliance must be transmitted to OAL within 180 days or emergency language will be repealed on 4–10–83.
2. Certificate of Compliance including amendments transmitted to OAL 3–15–83 and filed 4–19–83 (Register 83, No. 17).
3. Redesignation of sections 599.619–599.632, not consecutive, to article 2 filed 9–6–83; effective thirtieth day thereafter (Register 83, No. 37).
4. Amendment filed by the Department of Personnel Administration with the Secretary of State on 8–20–84; effective upon filing. Submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 85, No. 18).
5. Amendment filed by the Department of Personnel Administration with the Secretary of State on 5–23–86; effective upon filing. Submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 86, No. 26).
6. Amendment filed by the Department of Personnel Administration with the Secretary of State on 7–8–87; operative 7–8–87. Submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 87, No. 32).
7. Amendment filed by the Department of Personnel Administration with the Secretary of State on 6–27–88 pursuant to Government Code section 3539.5. Submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 88, No. 31).
8. Amendment of subsection (a)(4) filed by the Department of Personnel Administration with the Secretary of State on 9–1–88; operative 10–1–88. Submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 88, No. 41).
9. Amendment of subsections (a)(1) and (a)(5) filed by the Department of Personnel Administration with the Secretary of State on 6–30–89; operative 6–30–89. Submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 89, No. 33).
10. Amendment of subsections (a)(2)–(a)(4) filed by the Department of Personnel Administration with the Secretary of State on 10–20–89; operative 10–20–89. Submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 89, No. 49).
11. Change without regulatory effect amending section filed 9–10–91 (corrected text filed 9–11–91) pursuant to section 100, title 1, California Code of Regulations (Register 91, No. 51).
12. Amendment filed 12–31–91 with Secretary of State by Department of Personnel Administration; operative 12–31–91. Submitted to OAL for printing only pursuant to Government Code 3539.5 (Register 92, No. 12).
13. Editorial correction of printing errors in subsections (a)(1) and (a)(2)(A) (Register 92, No. 34).
14. Amendment of section heading and section filed 12–27–95; operative 1–1–96. Submitted to OAL for printing only pursuant to Government Code section 3539.5 (Register 95, No. 52).
15. Amendment filed 7–1–97; operative 7–1–97 pursuant to Government Code section 11343.4(d). Submitted to OAL for printing only pursuant to Government Code section 3539.5 (Register 97, No. 27).
16. Amendment of subsection (a)(1)(C) filed 10–28–99; operative 11–2–99. Submitted to OAL for printing only (Register 99, No. 51). At the request of DPA pursuant to Government Code section 3539.5, OAL is directing the printing of this regulation in the CCR. Title 1, CCR, section 6(b)(2)(F)1 defines "print only" regulations as "regulations *adopted pursuant to the requirements of the APA*, but which are expressly exempted by statute from OAL review . . . ." (Emphasis added.) In complying with DPA's request, OAL makes no determination concerning whether or not DPA has met the statutory requirements for adoption of regulations set forth in Government Code sections 11346–11347.3, including but not limited to public notice and comment. See 1998 OAL Determination No. 40 (Department of Personnel Administration, 96–008, December 9, 1998), California Regulatory Notice Register 99, No. 3–Z, January 15, 1999, p. 139, at p. 145; typewritten version, p. 18.
17. Amendment of subsection (a)(1)(C) filed 10–1–2001; operative 10–1–2001. Submitted to OAL for printing only pursuant to Government Code section 3539.5 (Register 2001, No. 46).

§ 599.620. Subsistence Allowance—Nonrepresented Employees, California State University and Colleges.

NOTE: Authority cited: Sections 19815.4 and 19820, Government Code. Reference: Sections 11030 and 13920, Government Code; and Title 2, California Administrative Code, Div. 2, Ch. 1, Section 706.

HISTORY

1. New section filed 10–15–82 as an emergency; effective upon filing (Register 82, No. 42). A Certificate of Compliance must be transmitted to OAL within 180 days or emergency language will be repealed on 4–13–83.
2. Repealed by operation of Government Code Section 11346.1(g) (Register 83, No. 37).

§ 599.621. Subsistence Allowance—Represented Employees.

A represented employee is defined in Section 599.615(c) of these regulations.

The represented employee on travel status shall be reimbursed for lodging, meals and incidental expenses. The circumstances of travel will determine the rate allowed.

(a) Short–term subsistence allowance will be authorized in accordance with the applicable provisions of a Memorandum of Understanding when the traveler incurs expenses comparable to those arising from the use of good, moderately priced establishments, catering to the general public. The short–term allowance is intended for trips of such duration that weekly or monthly rates are not obtainable and will be discontinued after the 30th consecutive day in one location unless a continuation has been previously approved by the appointing power. After 30 consecutive days in one location, represented employees may claim the long–term allowance.

(1) Incidental allowance as defined in the applicable provisions of a Memorandum of Understanding may be claimed for each 24–hour period.

(b) Long–term subsistence allowance will be authorized when the traveler incurs expenses in one location comparable to those arising from the use of establishments catering to the long–term visitor.

(1) A represented employee on long–term field assignment who maintains a permanent residence elsewhere while living at the job location may claim the full long–term allowance if one of the following exists:

(A) Permanent residence is occupied by the represented employee's dependents, or

(B) Permanent residence is maintained at a net expense to the represented employee exceeding $200 per month.

To qualify for this allowance, a represented employee must submit substantiating evidence of either condition to the appointing power in accordance with its requirements.

(2) A represented employee on long–term field assignment who does not maintain a permanent residence away from the job site will be authorized a long–term subsistence allowance of one–half the long–term allowance per day rounded to the nearest dollar.

(3) Represented employees may claim the appropriate long–term subsistence allowance (60% of the appropriate short–term allowance plus the incidental allowance) for every 24–hour period on travel status. Allowances for partial day travel status will be as follows:

(A) Less than 12 hours, one–half the appropriate allowance rounded to the nearest dollar.

(B) 12 to 24 hours, the full allowance.

(c) A non–commercial subsistence allowance will be authorized when the traveler incurs expenses comparable to those arising from the use of non–commercial subsistence facilities such as, but not limited to, house trailers or camping equipment.

(1) Represented employees may claim the non–commercial subsistence allowance (60% of the appropriate short–term allowance plus the incidental allowance) for every 24–hour period on travel status. Allowance for partial day travel status will be as follows:

(A) Less than 12 hours, one–half the appropriate allowance rounded to the nearest dollar.

(B) 12 to 24 hours, the full allowance.

(d) Out–of–State Subsistence Allowance. For out–of–state travel, represented employees will be reimbursed actual lodging expenses, supported by a voucher, and will be reimbursed for meal and incidental expenses in accordance with the applicable provisions of a Memorandum of Understanding.

(e) Out–of–Country Subsistence Allowance. When represented employees are authorized to travel outside the United States, and maintain a permanent U.S. residence occupied by the represented employee's dependents or maintained at a net monthly expense exceeding $200, reimbursement of subsistence expenses may exceed established rates only upon prior approval of the specific rates by the Department of Personnel Administration.

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19820, Government Code. Reference: Sections 3513(c), 11030 and 11032, Government Code.

HISTORY

1. New section filed 2–9–84 (corrected copy refiled 2–27–84); effective thirtieth day thereafter (Register 84, No. 8).
2. Editorial correction of HISTORY NOTES printed in error in Register 84, Nos. 8 and 12 (Register 84, No. 15).
3. Change without regulatory effect of subsection (b) filed 7–7–86; effective thirtieth day thereafter (Register 86, No. 28).
4. Change without regulatory effect amending section filed 9–11–91 pursuant to section 100, title 1, California Code of Regulations (Register 91, No. 52).

§ 599.622. Meal Expenses—Represented Employees.

A represented employee is defined in Section 599.621.

(a) Overtime Meals. When a represented employee is required to work overtime, he/she may receive an overtime meal allowance for actual expenses, supported by a voucher, (unless superseded by a Memorandum of Understanding), not to exceed the maximums prescribed in the applicable provisions of a Memorandum of Understanding for lunches. To be eligible, the represented employee must be required to report to work at least two hours prior to or be required to remain at least two hours past his/her regularly scheduled work day.

When required to work for extended periods of time, the represented employee may be reimbursed for actual meal expenses not to exceed the maximums prescribed for lunches in the applicable provisions of a Memorandum of Understanding for each additional six–hour period. No more than three overtime meal allowances may be claimed during any 24–hour period. The meal time itself shall not be included in the computation of overtime for purposes of this allowance.

Agencies operating facilities for feeding officers, employees, and official guests may instead furnish an official guest meal to a represented employee. Agencies shall maintain a record of all guest meals furnished for this purpose. A represented employee may not claim reimbursement for an overtime meal or be furnished a meal free of charge if claiming per diem.

(b) Business–Related Meals. When it is necessary for represented employees to conduct official state business during a meal, they may be reimbursed for actual meal expenses substantiated by a voucher up to the maximums prescribed in the applicable provisions of a Memorandum of Understanding.

To claim reimbursement for a business–related meal, the circumstances surrounding the meal must be beyond the control of the represented employee and it must be impractical to complete the business during normal working hours. Represented employees may not claim reimbursement for a business–related meal if they are also claiming per diem.

Claims for meal expenses where business is incidental to the meal or the attendance of the represented employee is primarily for public or community relations are specifically prohibited.

This section is intended to allow an agency to reimburse represented employees for meal expenses in the limited number of instances when they are required to incur such expenses in connection with the conduct of official state business.

(c) Represented employees of the Department of Forestry engaged in emergency fire suppression activities may be reimbursed for meal expenses without regard to any limitations. Emergency fire suppression activities are defined as actions taken under emergency conditions to extinguish uncontrolled fires which threaten to destroy life, property, or resources.

NOTE: Authority cited: Sections 19815.4(d), 19816, 19820 and 19822, Government Code. Reference: Sections 11030 and 19849.4, Government Code.

HISTORY

1. New section filed 2–9–84 (corrected copy refiled 2–27–84); effective thirtieth day thereafter (Register 84, No. 8).
2. Editorial correction of HISTORY NOTES printed in error in Register 84, Nos. 8 and 12 (Register 84, No. 15).

§ 599.623. Miscellaneous Meal Expenses—Excluded Employees.

(a) Overtime Meals. When an employee assigned to work week group 2 is required to work overtime, he/she may receive an overtime meal reimbursement of up to $8.00. To be eligible, the excluded employee must be required to report to work at least two hours prior to or remain at least two hours past his/her regularly scheduled work day, or work a minimum of 10 hours on a regularly scheduled day off or holiday.

When required to work for extended periods of time, the excluded employee may be reimbursed for meal expenses prescribed herein for each additional six–hours of overtime worked. No more than three overtime meal allowances may be claimed during any 24–hour period. The meal time itself shall not be included in the computation of overtime for purposes of this section.

In lieu of overtime meal reimbursement, agencies operating food service facilities may furnish an overtime meal to an excluded employee. Agencies shall maintain a record of all meals furnished for this purpose. An excluded employee may not claim reimbursement for an overtime meal or be furnished a meal free of charge if claiming travel meals.

Meals for Extended Arduous Work. On those rare occasions when an employee who is in a work week group other than work week group 2 would be required to physically or mentally work 10 hours or more (not including any breaks for meals) for an extended period of time, the employee, with approval of the appointing authority, may claim the actual cost of an arduous work meal up to $8.00. Such meals should only be approved when it is clear that the work schedule is consistently in excess of a normal full time schedule. Occasional extra hours worked, consistent with the nature of an other than Work Week Group 2 work schedule, do not meet the criteria for Extended Arduous Work Meals.

(b) Business–Related Meals. This section is intended to allow an agency to reimburse employees for meal expenses in the limited number of instances where they are required to incur such expenses in connection with the conduct of official state business with a person or persons from outside state government.

When it is necessary for an excluded employee to conduct official state business during a meal, he/she may be reimbursed for actual meal expenses, supported by a receipt, up to the maximums prescribed in Section 599.619(a)(1). Claims must include the establishment, the persons in attendance, the business conducted and the reason why the business had to be conducted during the meal period.

Business meals are not reimbursable when departments call meetings with their own and/or other department employees to conduct state business.

(1) To claim reimbursement for a business–related meal, the circumstances surrounding the meal must be beyond the control of the excluded employee and it must be impractical to complete the business during normal working hours, such as:

(A) to conduct state business with a person or persons from outside state service when availability of the person or persons is limited and it is imperative that business is conducted during the meal period, or

(B) to attend a board or commission meeting where attendance is mandatory and there is no adjournment during the meal period.

(2) Claims for meal expenses where business is incidental to the meal or the attendance of the excluded employee is primarily for public or community relations are specifically prohibited.

(c) Meals of Appointees. Members of non–salaried boards, commissions, and duly constituted advisory committees may be reimbursed for actual expenses up to the maximums prescribed in Section 599.619(a) when attending board, commission, and committee meetings. The restrictions of Section 599.616.1 do not apply. They may not claim this if they are also claiming subsistence allowance while on travel status.

While on travel status other than attending board, commission or committee meetings, appointees may be reimbursed for expenses prescribed in Section 599.619.

(d) Excluded employees of the Department of Forestry engaged in emergency fire suppression activities may be reimbursed for actual meal expenses without regard to mileage and time frame limitations to the extent that circumstances reasonably require such an exception. Emergency fire suppression activities are defined as actions taken under emergency conditions to extinguish uncontrolled fires which threaten to destroy life, property, or resources.

(e) Agencies operating facilities for feeding officers, employees and official guests may furnish an official guest meal to an employee. Agencies shall maintain a record of all guest meals furnished for this purpose. An employee may not claim reimbursement for a travel or overtime meal that has been provided as a guest meal.

NOTE: Authority cited: Sections 3539.5, 19815.4(d), 19816 and 19820, Government Code. Reference: Section 11030, Government Code.

HISTORY

1. Repealer and new section filed by Department of Personnel Administration with the Secretary of State on 9–9–85; effective upon filing. Submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 85, No. 41).
2. Correction of HISTORY 1. (Register 86, No. 28).
3. Amendment filed by Department of Personnel Administration with the Secretary of State on 6–27–88 pursuant to Government Code section 3539.5. Submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 88, No. 31).
4. Amendment filed 12–31–91 with Secretary of State by Department of Personnel Administration; operative 12–31–91. Submitted to OAL for printing only pursuant to Government Code 3539.5 (Register 92, No. 12).
5. Amendment of section heading and section filed 12–27–95; operative 1–1–96. Submitted to OAL for printing only pursuant to Government Code section 3539.5 (Register 95, No. 52).
6. Amendment of subsection (c) filed 10–28–99; operative 11–2–99. Submitted to OAL for printing only (Register 99, No. 51). At the request of DPA pursuant to Government Code section 3539.5, OAL is directing the printing of this regulation in the CCR. Title 1, CCR, section 6(b)(2)(F)1 defines "print only" regulations as "regulations *adopted pursuant to the requirements of the APA,* but which are expressly exempted by statute from OAL review . . . ." (Emphasis added.) In complying with DPA's request, OAL makes no determination concerning whether or not DPA has met the statutory requirements for adoption of regulations set forth in Government Code sections 11346–11347.3, including but not limited to public notice and comment. See 1998 OAL Determination No. 40 (Department of Personnel Administration, 96–008, December 9, 1998), California Regulatory Notice Register 99, No. 3–Z, January 15, 1999, p. 139, at p. 145; typewritten version, p. 18.

§ 599.624. Contracting for Subsistence Expenses.

Agreements may be entered into with restaurants, hotels, and lodging houses for the furnishing of subsistence to groups of state employees when such method of handling is advantageous to the State. When such agreements are entered into, the vendor may receive payment either from the group leader or by billing the State on a regular itemized invoice.

(a) Group leaders who pay subsistence expenses for other personnel may claim reimbursement by submitting a vendor's invoice and a list of names of the employees whose expenses were paid.

(b) Members of a group who have some portion of their subsistence expenses paid by the group leader may claim reimbursement for the remainder of their actual and necessary subsistence expenses in accordance with Section 599.619(a) or the applicable provisions of a Memorandum of Understanding as appropriate for any subsistence not provided.

(c) The total payment under any such agreement shall not exceed the aggregate of the subsistence allowances otherwise claimable by the participating employees.

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19820, Government Code. Reference: Section 11030, Government Code.

HISTORY

1. New section filed 2–9–84 (corrected copy refiled 2–27–84); effective thirtieth day thereafter (Register 84, No. 8).
2. Editorial correction of HISTORY NOTES printed in error in Register 84, Nos. 8 and 12 (Register 84, No. 15).
3. Editorial correction of first sentence (Register 95, No. 37).

§ 599.624.1. Contracting for Meals and/or Lodging Expenses—Excluded Employees.

Appointing authorities may enter into agreements with restaurants, hotels, and lodging establishments for the furnishing of subsistence to state employees at or below the rates provided in these rules when such method of handling is advantageous to the State. When such agreements are entered into, the vendor may receive payment either from the employee, a group leader or by billing the State on a regular itemized invoice.

(a) Group leaders who pay subsistence expenses for other personnel may claim reimbursement by submitting a vendor's invoice and a list of names of the employees whose expenses were paid.

(b) Individuals who have specific meal and/or lodging expenses paid by the group leader or department may not claim reimbursement for those meal and lodging expenses per 599.619.

(c) The total payment under any such agreement shall not exceed the aggregate of the subsistence allowances otherwise claimable by the participating employees.

(d) No individual's reimbursement shall exceed the rate(s) negotiated under the provisions of this section or the maximum subsistence rates provided in these rules, whichever is less.

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19820, Government Code. Reference: Section 11030, Government Code.

HISTORY

1. New section filed 12–27–95; operative 1–1–96. Submitted to OAL for printing only pursuant to Government Code section 3539.5 (Register 95, No. 52).

§ 599.625. Receipts or Vouchers.

(a) Receipts or vouchers shall be submitted for every item of expense except as follows:

(1) Railroad and bus fares, where the fares are available in published tariffs, and travel is wholly within the State of California. However, vouchers must be submitted in the case of cash purchases of airplane travel, Pullman accommodations, or extra fare train, travel by any common carrier outside of the State except taxi or hotel bus fares.

(2) Subsistence allowances, except when specified.

(3) Street car, ferry fares, bridge and road tolls.

(4) Long distance telephone or telegraph charges, if date, place and party called are shown, unless the telephone call is in excess of $2.50 in which case vouchers or other supporting evidence shall be provided.

(5) Taxi or hotel bus fares, when necessary upon official business.

(6) All legal expenditures of $1 or less.

(7) Parking fees of $3.50 or less for any one continuous period of parking.

(b) In cases where receipts cannot be obtained or have been lost, a statement to that effect shall be made in the expense account and the reason given. In the absence of satisfactory explanation the amount involved shall not be allowed.

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19820, Government Code. Reference: Section 11030, Government Code.

HISTORY

1. New section filed 2–9–84 (corrected copy refiled 2–27–84); effective thirtieth day thereafter (Register 84, No. 8).
2. Editorial correction of HISTORY NOTES printed in error in Register 84, Nos. 8 and 12 (Register 84, No. 15).

§ 599.625.1. Receipts—Excluded Employees.

An excluded employee is defined in Section 599.615(b).

(a) Receipts are required for each item of expense of $25.00 or more. As specified in this rule, receipts are also required for items of expense of less than $25.00. Receipts shall be submitted with claims for every item of business expenses incurred while away from headquarters conducting state business except for actual expenses as follows:

(1) Railroad and bus fares of less than $25.00 when travel is wholly within the State of California.

(2) Street car, ferry fares, bridge and road tolls, local rapid transit system, taxi, shuttle or hotel bus fares, and parking fees of $10.00 or less for each continuous period of parking or each item of transportation expense noted in this item.

(3) Telephone, telegraph, fax or other business charges related to State business of $5.00 or less.

(b) In the absence of a receipt, reimbursement shall be limited to the non–receipted amount above.

(c) Regardless of the exceptions in (a) above, the authority approving the claim and/or the appointing power may require any additional verification, or information, he/she deems necessary to determine that an expense was actually and reasonably incurred. In the absence of satisfactory explanation no reimbursement shall be allowed. If there is reason to believe that inappropriate non–receipted expenses have been claimed, receipts may be required for each item of expense listed above for future travel.

NOTE: Authority cited: Sections 3539.5, 19815.4(d), 19816 and 19820, Government Code. Reference: Section 11030, Government Code.

HISTORY

1. New section filed by Department of Personnel Administration with the Secretary of State on 9–1–88; operative 10–1–88. Submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 88, No. 41).
2. Amendment filed 12–31–91 with Secretary of State by Department of Personnel Administration; operative 12–31–91. Submitted to OAL for printing only pursuant to Government Code 3539.5 (Register 92, No. 12).
3. Amendment of section heading and section filed 12–27–95; operative 1–1–96. Submitted to OAL for printing only pursuant to Government Code section 3539.5 (Register 95, No. 52).

§ 599.626. Transportation Expenses.

(a) Transportation expenses consist of the charges for commercial carrier fares; private car mileage allowances; emergency repairs to state cars; overnight and day parking of state or privately–owned cars; bridge and road tolls; necessary taxi, bus, or streetcar fares; and all other charges essential to the transport from and to the official headquarters.

(b) Reimbursement will be made only for the method of transportation which is in the best interest of the State, considering both direct expense as well as the officer's or employee's time. Provided the mode of transportation selected does not conflict with the needs of the agency, the officer or employee may use a more expensive form of transportation and be reimbursed at the amount required for a less expensive mode of travel. Both modes of transportation will be shown on the travel claim with reference to this section.

(c) In any case in which reimbursement for expenses of transportation by private automobile or privately–owned airplane is claimed, the license number of the automobile or the civilian airplane license number as well as the name of each state officer, employee, or board, commission, or authority member transported on the trip shall be stated. As such reimbursement is for the expense of use of the automobile or airplane regardless of the number of persons transported, no reimbursement for such transportation shall be allowed any passenger in any automobile or airplane operated by another such officer, employee or member.

In the determination of fares or mileage paid for transportation by airplane, the point of origin or return shall be an appropriate airport facility serving the area of the employee's headquarters or residence, whichever results in the lesser distance or amount.

(d) Expenses arising from travel between home or garage and headquarters shall not be allowed. When a trip is commenced or terminated at claimant's home, the distance traveled shall be computed from either his/her headquarters or home, whichever shall result in the lesser distance.

Exceptions to the above are:

(1) Where such expenses are incurred by call back for overtime work necessitating more than one trip to the work location on a normal work day or by reason of any call back on an employee's normal day off.

(2) When the headquarters of a permanent, full time employee is located 24 or more kilometers (15 or more road miles) one way from the nearest residential area with available housing, the appointing power may authorize payment of expenses incurred by an employee in the use of a privately owned vehicle.

(A) The authorizing agency must obtain prior approval from the Department of Personnel Administration with regard to the location of the nearest residential area with available housing and amount of mileage to be paid.

(B) Reimbursement will be at the rate provided in Section 599.631(b) or the applicable provisions of a Memorandum of Understanding, as appropriate, for distance driven and authorized in accordance with this rule and being in excess of 48 kilometers (30 miles) round trip.

(C) The term "available housing" as used in this subsection is intended to relate primarily to the quantity of housing available and not to its quality or cost.

(D) Distance will be computed from a location within the selected nearest residential area to the employee's work headquarters by the most direct road route and not the actual miles driven.

(E) If an employee's residence is not located in the designated residential area, but is more than 48 kilometers (30 miles) round trip from his/her remote location headquarters, he/she may be reimbursed for travel from his/her residence or from the selected location within the designated residential area, whichever is less.

(F) Payments will be authorized only if the appointing power has determined that the employee cannot participate in a department sponsored car or van pool.

(G) An employee whose headquarters is designated as remote and who lives in the designated residential area who is required to report to a worksite other than headquarters for a particular day, and who is required to use his/her own vehicle shall receive payment for the round trip from the designated residential area to the worksite.

(H) An employee whose headquarters is designated as remote and who lives less than 24 kilometers (15 miles) from headquarters, who is required to report to a worksite other than headquarters for a particular day, and who is required to use his/her own vehicle shall receive payment for the round trip from his/her own residence to the worksite or his/her headquarters to the worksite, whichever is less.

(I) An employee whose headquarters is designated as remote, who does not live in the designated area but lives more than 24 kilometers (15 miles) from his/her headquarters, who is required to report to a worksite other than headquarters for a particular day and who is required to use his/her own vehicle shall receive payment for the actual round–trip distance by the most direct route, not to exceed:

1. The distance from the designated residential area to the worksite, or
2. The distance from the employee's headquarters to the worksite, whichever is greater.

(3) When travel to or from a common carrier commences or terminates one hour before or one hour after the regularly scheduled work day or on a regularly scheduled day off, distance may be computed from the employee's residence in accordance with Section 599.631(c) or the applicable provisions of a Memorandum of Understanding as appropriate.

(e) When an employee's regular work assignment requires him/her to rotate among two or more posts or work stations at different geographic locations within a metropolitan area either to protect state property or state personnel and he/she is instructed to report directly to the designated post for a full shift, distance from his/her home to the designated post and return shall be limited to that which exceeds the round trip distance from his/her home to his/her designated headquarters, and shall be computed at the rate set forth under Section 599.631(b) or in the applicable provisions of a Memorandum of Understanding as appropriate. For the purpose of determining the correct distance to be allowed in these situations, headquarters shall be a designated single geographic location or address regardless of whether the employee spends a major or significant portion of his/her working time there.

(f) No reimbursement will be allowed for transportation expense when the employee uses a privately–owned motorcycle or motor–driven cycle in the conduct of official state business.

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19820, Government Code. Reference: Section 11030, Government Code.

HISTORY

1. New section filed 2–9–84 (corrected copy refiled 2–27–84); effective thirtieth day thereafter (Register 84, No. 8).
2. Editorial correction of HISTORY NOTES printed in error in Register 84, Nos. 8 and 12 (Register 84, No. 15).

§ 599.626.1. Transportation Expenses—Excluded Employees.

(a) Transportation expenses consist of the charges for commercial carrier fares; private care mileage allowances; emergency repairs to state cars; overnight and day parking of state or privately–owned cars; bridge and road tolls; necessary taxi, bus, or streetcar fares; and all other charges essential to the transport from and to the official headquarters while on authorized state business.

(b) Reimbursement will be made only for the method of transportation which is in the best interest of the State, considering both direct expense as well as the officer's or employee's time. Provided the mode of transportation selected does not conflict with the needs of the agency, the officer or employee may use a more expensive form of transportation and be reimbursed at the amount required for the least expensive mode of travel that is in the best interest of the state. Both modes of transportation will be shown on the travel claim with reference to this section. A cost comparison shall be completed and attached to the claim. Cost comparisons shall include only the least costly methods of transport for those expenses actually being substituted, and shall include only the expenses of traveling from one location to another. Transportation expense at the travel work location will be reimbursed based on the actual business transportation expenses incurred while at the travel location.

(c) Expenses arising from travel between home or garage and headquarters shall not be allowed regardless of the employee's normal mode of transportation. When a trip is commenced or terminated at claimant's home, the distance traveled shall be computed from either his/her headquarters or home, whichever shall result in the lesser distance.

Exceptions to the above are:

(1) Where such expenses are incurred by call back to work necessitating more than one trip to the work location on a normal work day or by reason of any call back or pre–scheduled work on an employee's normal day off.

(2) When travel to or from a common carrier commences or terminates one hour before or one hour after the regularly scheduled work day or on a regularly scheduled day off, distance may be computed from the employee's residence in accordance with Section 599.631.

(3) When the criteria in 599.626(d)(2) for remote headquarters are met. This reimbursement is allowed only with the advance written approval of the Department of Personnel Administration.

(d) When an employee's regular work assignment requires him/her to report to or rotate among two or more posts or work stations at different geographic locations and he/she is instructed to report to a designated post, the reimbursable distance from his/her home to the designated post and return shall be limited to that which exceeds the round trip distance from his/her home to his/her designated headquarters. Reimbursement shall be computed at the rate set forth under Section 599.631.

(e) No reimbursement will be allowed for transportation expense when the employee uses a privately–owned motorcycle or motor–driven cycle in the conduct of state business.

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19820, Government Code. Reference: Section 11030, Government Code.

HISTORY

1. New section filed 12–27–95; operative 1–1–96. Submitted to OAL for printing only pursuant to Government Code section 3539.5 (Register 95, No. 52).
2. Amendment of subsection (c)(3) and (d) filed 10–28–99; operative 11–2–99. Submitted to OAL for printing only (Register 99, No. 51). At the request of DPA pursuant to Government Code section 3539.5, OAL is directing the printing of this regulation in the CCR. Title 1, CCR, section 6(b)(2)(F)1 defines "print only" regulations as "regulations *adopted pursuant to the requirements of the APA*, but which are expressly exempted by statute from OAL review . . . ." (Emphasis added.) In complying with DPA's request, OAL makes no determination concerning whether or not DPA has met the statutory requirements for adoption of regulations set forth in Government Code sections 11346–11347.3, including but not limited to public notice and comment. See 1998 OAL Determination No. 40 (Department of Personnel Administration, 96–008, December 9, 1998), California Regulatory Notice Register 99, No. 3–Z, January 15, 1999, p. 139, at p. 145; typewritten version, p. 18.

§ 599.627. Special Transportation.

(a) Where it is necessary to hire special conveyances, except automobiles, a full explanation, stating the facts constituting the necessity, shall accompany the expense claim.

(b) Commercial Automobile Rental.

(1) Reimbursement will be for actual and necessary costs of such rental when substantiated by a voucher. Where it is necessary to pay extra charges or premium rental rates for air conditioning, convertible body-style, expensive, or other luxury items, a full explanation shall accompany the expense claim.

(2) Reimbursement will not be made for a damage waiver. Reimbursement will be made to the officer or employee for any loss necessarily sustained by him/her by reason of his/her not having purchased such waiver.

(c) Where a privately owned bicycle is used in the conduct of official state business, the employee will be allowed to claim 4 cents per 1.6 kilometers (mile).

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19820, Government Code, Reference: Section 11030, Government Code.

HISTORY

1. New section filed 2–9–84 (corrected copy refiled 2–27–84); effective thirtieth day thereafter (Register 84, No. 8).
2. Editorial correction of HISTORY NOTES printed in error in Register 84, Nos. 8 and 12 (Register 84, No. 15).

§ 599.627.1. Special Transportation—Excluded Employees.

(a) Where it is authorized and necessary to hire special conveyances, except automobiles, a full explanation, stating the facts constituting the necessity, shall accompany the expense claim.

(b) Commercial Automobile Rental.

(1) Reimbursement will be for actual and necessary costs of such rental when substantiated by a receipt. Where it is necessary to pay extra charges or premium rental rates for a larger vehicle or one that is specially equipped, a full explanation shall accompany the expense claim. Reimbursement of the additional expenses shall be subject to approval by the appointing power.

(2) Reimbursement will not be made for a damage waiver. Reimbursement will be made to the officer or employee for any loss necessarily sustained by him/her not having purchased such waiver.

(c) Where a privately owned bicycle is used in the conduct of official state business, the employee will be allowed to claim 4 cents per mile.

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19820, Government Code. Reference: Section 11030, Government Code.

HISTORY

1. New section filed 12–27–95; operative 1–1–96. Submitted to OAL for printing only pursuant to Government Code section 3539.5 (Register 95, No. 52).

§ 599.628. Transportation by Aircraft.

(a) Scheduled Airline. Claims for transportation by scheduled airline shall be allowed at the lowest fare available in conformity with the regular published tariffs for scheduled airlines in effect on the date the flight originated. Claims for reimbursement of higher fares or extra charges for transportation by scheduled airline may be allowed if accompanied by a full explanation stating the facts constituting the official necessity.

(b) Privately–Owned Aircraft. A claim of an employee for transportation by privately–owned aircraft shall be allowed where he/she has obtained prior approval of the use of this form of transportation from his/her department. If an employee is to act as pilot, he/she must satisfy the requirements of the Insurance Officer, Department of General Services, as to liability insurance coverage. The Insurance Officer shall file approved authorizations for such allowance with the State Controller.

(1) Except as provided in subsection (e), reimbursement for use of the employee's privately–owned aircraft shall be made at the rate of 28 cents per statute mile, or in accordance with the applicable provisions of a Memorandum of Understanding.

(A) Distance shall be computed on the basis of shortest air route from origin to destination, using airways whenever possible. Distance shown on claim shall be clearly marked "Air Distance."

(B) When the trip is limited solely to state business and the "Air Distance" cannot accurately be computed from origin to destination, the department director may authorize reimbursement for the actual cost of renting a plane.

(2) Reimbursement for use of a rented aircraft will be for actual and necessary costs of such rental when substantiated by voucher.

(A) Reimbursement will be authorized only for the size and type aircraft necessary to complete the assignment.

(3) When substantiated by a voucher, reimbursement will be made for actual and necessary expenses for landing and parking fees in connection with the use of the aircraft. Reimbursement will not be allowed for storage or parking fees at the location where the privately–owned aircraft is normally stored.

(4) If an employee is to act as pilot and carry passengers he/she must, in addition to Federal Aviation Administration Regulations, have previously logged as a licensed private pilot in command of an aircraft at least 250 hours of actual flight. In addition, the employee pilot must have logged, as a pilot in command of an aircraft, at least 40 hours of actual flight within the preceding 12 months. Any employee pilot who has carried or intends to carry passengers may be required to present his/her log book substantiating that he/she meets the requirements. Passenger shall be defined as any person other than the pilot traveling in the aircraft. An employee pilot who carries a passenger but fails to meet the above qualifications shall not be reimbursed for transportation expense.

(c) Payment of Fare. Payment for transportation by aircraft may be made by (1) cash, (2) credit card, or (3) ticket order. When payment is made by cash, the travel expense claim must be accompanied by the traveler's flight coupon, in accordance with Section 599.625(a)(1). If no flight coupon was issued, as may be the case with chartered or private aircraft, a formal receipt must be submitted. If payment was made by credit card or by ticket order, this should be noted on the travel expense claim.

(d) Air Travel Insurance. Any state agency may insure its officers and employees against injury or death arising from aircraft accidents incurred while flying on state business in other than regularly scheduled passenger aircraft, subject to the following conditions:

(1) Insurance shall be provided only to those employees who are directd to fly to fulfill their work requirements. Insurance coverage shall not be provided when the use of a privately–owned aircraft is for point–to–point transportation and is a voluntary response from the employee, even though such use may be advantageous to the State.

(2) Application for insurance shall be submitted to, and the insurance procured by, the Department of General Services.

(3) Except as provided in subsection (4) below, the maximum limit of such insurance shall be $15,000 in the case of death or dismemberment for each officer and employee.

(4) For nonrepresented employees, as defined in Section 599.619, the maximum limit for air travel insurance shall be $50,000 in the case of death or dismemberment for each officer and employee.

(e) For nonrepresented employees reimbursement for use of the employee's privately–owned aircraft shall be made at the rate of 50 cents per statute mile.

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19820, Government Code. Reference: Sections 11030 and 11030.5, Government Code.

HISTORY

1. New section filed 2–9–84 (corrected copy refiled 2–27–84); effective thirtieth day thereafter (Register 84, No. 8).
2. Editorial correction of HISTORY NOTES printed in error in Register 84, Nos. 8 and 12 (Register 84, No. 15).
3. Amendment filed by the Department of Personnel Administration with the Secretary of State on 8–20–84; effective upon filing. Submitted to OAL for printing only pursuant to Government Code Section 11343.8 (Register 85, No. 18).
4. Amendment of subsection (e) filed by the Department of Personnel Administration with the Secretary of State on 7–8–87; operative on 7–8–87. Submitted to OAL for printing only pursuant to Government Code Section 11343.8 (Register 87, No. 32).

§ 599.628.1. Transportation by Aircraft—Excluded Employees.

In the determination of fare or mileage reimbursement for transportation by airplane, the point of origin and return shall be an appropriate airport facility serving the area of the employee's residence or headquarters, whichever is most advantageous for the State.

(a) Scheduled Airline. Reimbursement of expenses for transportation by scheduled airline shall be at the current contract rate; except that when the employee's actual airfare is lower, the lower amount shall be reimbursed. Claims for reimbursement of higher fares or extra charges for transportation by scheduled airline may be allowed if accompanied by a full explanation stating the facts constituting the official necessity, and approved by the appointing power.

(b) Privately–Owned Aircraft. A claim of an employee for transportation by privately–owned aircraft shall be allowed where he/she has obtained prior approval of the use of this form of transportation from his/her department. If an employee is to act as pilot, he/she must satisfy the following insurance requirements:

(1) certificate of current insurance in an amount of not less than $50,000 per person liability.

(2) certificate of current insurance in an amount of not less than $1,000,000 liability per incident.

(3) Reimbursement for the use of the employee's privately–owned aircraft shall be made at the rate of 50 cents per statute mile. Claims for reimbursement for privately–owned aircraft expenses must include the civilian airplane license number and the name of each state officer; employee; or board, commission, or authority member transported on the trip. No reimbursement of transportation expenses will be allowed any employee while a passenger in any airplane operated by another officer, employee or member.

(A) Distance shall be computed on the basis of shortest air route from origin to destination, using airways whenever possible. Distance shown on claim shall be clearly marked "Air Distance."

(B) When the trip is limited solely to state business and the "Air Distance" cannot accurately be computed from origin to destination, the department director may authorize reimbursement for the actual cost of renting a plane.

(4) Reimbursement for use of a rented aircraft will be for actual and necessary costs of such rental when substantiated by a receipt.

(A) Reimbursement will be authorized only for the size and type aircraft necessary to complete the assignment.

(B) When substantiated by a receipt, reimbursement will be made for actual and necessary expenses for landing and parking fees in connection with the use of the aircraft. Reimbursement will not be allowed for storage or parking fees at the location where the privately–owned aircraft is normally stored.

(6) If an employee is to act as pilot and carry passengers he/she must, in addition to Federal Aviation Administration Regulations, have previously logged as a certified pilot, at least 250 hours of actual flight as pilot in command of an aircraft. In addition, the employee pilot must have logged, as a pilot in command of an aircraft, at least 40 hours of actual flight within the preceding 12 months.

Any employee pilot who has carried or intends to carry passengers may be required to present his/her log book substantiating that he/she meets the requirements. Passenger shall be defined as any person other than the pilot traveling in the aircraft. An employee pilot who carries a passenger but fails to meet the above qualifications shall not be reimbursed for transportation expense.

(c) Payment of Fare. Payment for transportation by aircraft may be made by (1) cash, (2) credit card, or (3) ticket order. When payment is made by cash, the travel expense claim must be accompanied by the traveler's flight coupon, in accordance with Section 599.625(a)(1). If no flight coupon was issued, as may be the case with chartered or private aircraft, a formal receipt must be submitted. If payment was made by credit card or by ticket order, this should be noted on the travel expense claim.

(d) Air Travel Insurance. Any state agency may insure that its officers and employees against injury or death arising from aircraft accidents incurred while flying on state business in other than regularly scheduled passenger aircraft, subject to the following conditions:

(1) Insurance shall be provided only to those employees who are directed to fly to fulfill their work requirements. Insurance coverage shall not be provided when use of a privately–owned aircraft is for point–to–point transportation and is a voluntary response from the employee, even though such use may be advantageous to the State.

(2) Application for insurance shall be submitted to, and the insurance procured by, the Department of General Services.

(3) Except as provided in subsection (4) below, the maximum limit of such insurance shall be $15,000 in the case of death or dismemberment for each officer and employee.

(4) For excluded employees, as defined in Section 599.619.1, the maximum limit for air travel insurance shall be $50,000 in the case of death or dismemberment for each officer and employee.

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19820, Government Code. Reference: Sections 11030 and 11030.5, Government Code.

HISTORY

1. New section filed 12–27–95; operative 1–1–96. Submitted to OAL for printing only pursuant to Government Code section 3539.5 (Register 95, No. 52).

§ 599.629. Railroad Transportation.

(a) No more than actual fare on any transportation service, in accordance with the latest tariffs at the time the trip was made, shall be allowed. Special rates and round–trip rates shall be used whenever possible.

(b) Reimbursement for roomette Pullman accommodations will be allowed. Where it is necessary to use Pullman accommodations more expensive than a roomette, a full explanation stating the facts constituting the official necessity shall accompany the expense account together with a receipted voucher.

(c) Unused portions of railroad and sleeping car tickets are subject to refunds and all steps necessary to secure refunds on such tickets shall be taken.

(d) Any unusual delay or a deviation from the shortest, usually travelled route shall be explained unless connected with return trip out–of–state deportation travel authorized by the Department of Mental Health or the Department of the Youth Authority.

(e) In connection with return trip out–of–state deportation travel authorized by the Department of Mental Health or the Department of the Youth Authority, reimbursement for subsistence and transportation expenses shall be made on the basis of shortest usually travelled routes, conventional train time, first class fare, and lower standard Pullman rates as certified to by a railroad passenger agent.

(f) Meals incurred while on overnight train travel will be reimbursed in accordance with Section 599.619(a) or the applicable provisions of a Memorandum of Understanding as appropriate.

(g) Tickets for rail transportation or Pullman accommodations may be purchased (1) by the individual, (2) by credit card, or (3) ticket order. If purchased by credit card, or by ticket order this fact should be noted on the individual's expense claim.

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19820, Government Code. Reference: Section 11030, Government Code.

HISTORY

1. New section filed 2–9–84 (corrected copy refiled 2–27–84); effective thirtieth day thereafter (Register 84, No. 8).
2. Editorial correction of HISTORY NOTES printed in error in Register 84, Nos. 8 and 12 (Register 84, No. 15).

§ 599.629.1. Railroad Transportation—Excluded Employees.

(a) No more than actual fare on any transportation service, in accordance with the latest tariffs at the time the trip was made, shall be allowed. Special rates and round–trip rates shall be used whenever possible.

(b) Reimbursement for roomette or Pullman accommodations will be allowed. Where it is necessary to use Pullman accommodations more expensive than a roomette, a full explanation stating the facts constituting the official necessity shall accompany the expense account together with a receipt.

(c) Unused portions of railroad and sleeping car tickets are subject to refunds and all steps necessary to secure funds on such tickets shall be taken.

(d) Any unusual delay or a deviation from the shortest, usually travelled route shall be explained.

(e) Any expenses related to deportation will be reimbursed in accordance with Federal Immigration and Naturalization Service rules.

(f) Meals incurred while on overnight train travel will be reimbursed in accordance with Section 599.619.

(g) Tickets for rail transportation or Pullman accommodations may be purchased by the individual, by credit card, or ticket order. If purchased by credit card or by ticket order, this fact should be noted on the individual's expense claim.

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19820, Government Code. Reference: Section 11030, Government Code.

HISTORY

1. New section filed 12–27–95; operative 1–1–96. Submitted to OAL for printing only pursuant to Government Code section 3539.5 (Register 95, No. 52).

§ 599.630. Transportation by Automobile—Represented Employees.

A represented employee is defined in Section 599.621.

(a) When the represented employee is authorized to use a privately owned automobile even though a state automobile is available, the rate as defined in the applicable provisions of a Memorandum of Understanding will be allowed.

(b) When the represented employee uses a privately owned automobile because the agency has determined that: (1) a state automobile is not available; or (2) it is more advantageous economically to the State for the employee to use his/her own automobile, even though a state automobile is available, the represented employees may claim up to 20.5 cents per 1.6 kilometers (mile) without certification and up to 25 cents per 1.6 kilometers (mile) with certification as defined in the applicable provisions of a Memorandum of Understanding. Even though a state automobile may in fact be on hand, it may not be available to the represented employee because it is reserved for other purposes or because it is more advantageous economically to the State for the represented employee to use his/her own automobile, or because use of a state automobile is unreasonable considering all circumstances in a particular situation. In determining economic advantage of state versus private automobile, a supervisor will include the following in his/her consideration.

(1) Distance to be traveled and duration of trip, as these affect direct costs.

(2) Location of the represented employee's residence, regular workplace, destination, and location of available state automobiles; as these factors affect employee time and distance traveled.

The Department of Personnel Administration may establish appropriate controls over payment of this allowance by a state agency when the Department reasonably believes that proper control has not been exercised by the agency.

(c) When the represented employee's use of a privately owned automobile is authorized for travel to or from a common carrier terminal, and the automobile is not parked at the terminal during the period of absence, a rate of 37 cents up to 50 cents per 1.6 kilometers (mile) as defined in the applicable provisions of a Memorandum of Understanding may be claimed while the employee occupies the vehicle for the distance between the terminal and his/her residence or headquarters, whichever is less, except if the employee commences or terminates travel one hour before or one hour after his/her regularly scheduled work day, or on a regularly scheduled day off, mileage may be computed from his/her residence.

Claims exceeding 41 cents per 1.6 kilometers (mile) must be certified in accordance with Section 599.630(b).

(d) All ferry, bridge, or toll road charges will be allowed.

(e) All necessary parking charges while on state business will be allowed for:

(1) Day parking on trips away from the headquarters office and employee residence.

(2) Overnight public parking on trips away from the headquarters and employee residence cities, except that parking should not be claimed if expense–free overnight parking is available.

(3) Day parking adjacent to headquarters office, but only if the employee had other reimbursable private car expenses for the same day. Represented employees may not prorate weekly or monthly parking fees.

(f) Gasoline and routine car repair expenses will not be allowed.

(g) The mileage reimbursement rates include the cost of maintaining liability insurance at the minimum amount prescribed by law and collision insurance sufficient to cover the reasonable value of the vehicle, less a standard deductible. When a privately owned vehicle operated by represented employee is damaged by collision or is otherwise accidentally damaged, reasonable reimbursement for repair will be allowed if:

(1) The damage occurred while the vehicle was used on official state business by permission or authorization of the employing agency; and

(2) The vehicle was damaged through no fault of the represented employee; and

(3) The amount claimed is an actual loss to the represented employee, and is not recoverable directly from or through the insurance coverage of any party involved in the accident; and

(4) The loss claimed does not result from a decision of a represented employee not to maintain collision coverage; and

(5) The claim is process in accordance with the procedures prescribed by the Department of General Services.

(h) Specialized Vehicles. Represented employees with a physical disability who must operate a motor vehicle on official state business and who operate only specially equipped or modified vehicles may claim up to 31 cents per 1.6 kilometers (mile) with certification in accordance with Section 599.630(b) of these regulations. Supervisors approving these claims must determine the employees's need for the use of such vehicles.

NOTE: Authority cited: Sections 19815.4(d), 19815, 19820, Government Code. Reference: Section 11030, Government Code.

HISTORY

1. New section filed 2–9–84 (corrected copy refiled 2–27–84); effective thirtieth day thereafter (Register 84, No. 8).
2. Editorial correction of HISTORY NOTES printed in error in Register 84, Nos. 8 and 12 (Register 84, No. 15).

§ 599.631. Transportation by Privately Owned Automobile—Excluded Employees.

(a) Where the employee is authorized to use a privately owned automobile on official state business the reimbursement rate shall be 34 cents per mile. Claims for reimbursement for private vehicle expenses must include the vehicle license number and the name of each state officer, employee or board, commission or authority member transported on the trip. No reimbursement of transportation expense shall be allowed any passenger in any vehicle operated by another state officer, employee or member.

(1) Expenses arising from travel between home and headquarters or garage shall not be allowed, except as provided in 599.626(d)(2) or 599.626.1(c), regardless of the employee's normal mode of transportation.

(2) When a trip is commenced or terminated at a claimant's home on a regularly scheduled work day, the distance traveled shall be computed from either his/her residence or headquarters, whichever shall result in the lesser distance except as provided in 599.626.1(c).

(3) However, if the employee commences or terminates travel on a regularly scheduled day off, mileage may be computed from his/her residence.

(b) Where the employee's use of a privately owned automobile is authorized for travel to or from a common carrier terminal, and the automobile is not parked at the terminal during the period of travel, the employee may claim double the number of miles between the terminal and the employee's headquarters or residence, whichever is less, at a rate as defined in Section 599.631(a), while the employee occupies the automobile for the distance between the terminal and his/her residence or headquarters. If the employee commences or terminates travel one hour before or after his/her regularly scheduled work day, or on a regularly scheduled day off, mileage may be computed from his/her residence.

(c) All ferry, bridge, or toll road charges will be allowed with any required receipts.

(d) All necessary parking charges while on state business will be allowed, with any required receipts, for:

(1) Day parking on trips away from the headquarters office and excluded employee's primary residence.

(2) Overnight public parking on trips away from the headquarters and excluded employee's primary residence, except that parking shall not be claimed if expense–free overnight parking is available.

(3) Day parking adjacent to either a headquarters office, a temporary job site or training site, but only if the excluded employee had other reimbursable private or state automobile expenses for the same day. An employee may not prorate weekly or monthly parking fees.

(e) Gasoline, maintenance and automobile repair expenses will not be allowed.

(f) The mileage reimbursement rates include the cost of maintaining liability insurance at the minimum amount prescribed by a law and collision insurance sufficient to cover the reasonable value of the automobile, less a deductible. When a privately owned automobile operated by state officer, agent or excluded employee is damaged by collision or is otherwise accidentally damaged, reimbursement for repair or the deductible to a maximum of $500.00 will be allowed if:

(1) The damage occurred while the automobile was used on official state business by permission or authorization of the employing agency; and

(2) The automobile was damaged through no fault of the state officer, agent or excluded employee; and

(3) The amount claimed is an actual loss to the state officer, agent or excluded employee, and is not recoverable directly from or through the insurance coverage of any party involved in the accident; and

(4) The loss claimed does not result from a decision of a state officer, agent or excluded employee not to maintain collision coverage; and

(5) The claim is processed in accordance with the procedures prescribed by the Department of Personnel Administration.

(g) Specialized Vehicles. An employee with a physical disability who must operate a motor vehicle on official state business and who can operate only specially equipped or modified vehicles may claim a rate of 34 cents per mile without certification and up to 37 cents per mile with certification. Where travel is authorized to and from a common carrier terminal, as specified in Section 599.631(b) the employee may compute the mileage as defined in Section 599.631(b). Supervisors approving these claims must determine the employee's need for the use of such vehicles.

NOTE: Authority cited: Sections 3539.5, 19815.4(d), 19816 and 19820, Government Code. Reference: Section 11030, Government Code.

HISTORY

1. Amendment of subsections (a)–(c) and (h) filed by the Department of Personnel Administration with the Secretary of State on 8–20–84; effective upon filing. Submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 85, No. 18).
2. Amendment filed by the Department of Personnel Administration with the Secretary of State on 7–8–87; operative 7–8–87. Submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 87, No. 32).
3. Amendment filed by the Department of Personnel Administration with the Secretary of State on 6–27–88 pursuant to Government Code section 3539.5. Submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 88, No. 31).
4. Amendment filed by the Department of Personnel Administration with the Secretary of State on 6–30–89; operative 6–30–89. Submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 89, No. 33).
5. Amendment filed 12–31–91 with Secretary of State by Department of Personnel Administration; operative 12–31–91. Submitted to OAL for printing only pursuant to Government Code section 3539.5 (Register 92, No. 12).

6. Amendment of section heading and section filed 12–27–95; operative 1–1–96. Submitted to OAL for printing only pursuant to Government Code section 3539.5 (Register 95, No. 52).

7. Amendment of subsection (a)(1) filed 1–10–96; operative 1–10–96. Submitted to OAL for printing only pursuant to Government Code section 3539.5 (Register 96, No. 38).

8. Editorial correction of subsection (g) (Register 96, No. 38).

9. Amendment of subsection (a) filed 7–1–97; operative 7–1–97 pursuant to Government Code section 11343.4(d). Submitted to OAL for printing only pursuant to Government Code section 3539.5 (Register 97, No. 27).

10. Amendment of subsections (a), (a)(2) and (g) filed 10–28–99; operative 11–2–99. Submitted to OAL for printing only (Register 99, No. 51). At the request of DPA pursuant to Government Code section 3539.5, OAL is directing the printing of this regulation in the CCR. Title 1, CCR, section 6(b)(2)(F)1 defines "print only" regulations as "regulations *adopted pursuant to the requirements of the APA,* but which are expressly exempted by statute from OAL review . . . ." (Emphasis added.) In complying with DPA's request, OAL makes no determination concerning whether or not DPA has met the statutory requirements for adoption of regulations set forth in Government Code sections 11346–11347.3, including but not limited to public notice and comment. See 1998 OAL Determination No. 40 (Department of Personnel Administration, 96–008, December 9, 1998), California Regulatory Notice Register 99, No. 3–Z, January 15, 1999, p. 139, at p. 145; typewritten version, p. 18.

11. Amendment of subsections (a) and (g) filed 10–1–2001; operative 10–1–2001. Submitted to OAL for printing only pursuant to Government Code section 3539.5 (Register 2001, No. 46).

§ 599.632. Transportation by Automobile—Nonrepresented Employees, California State University and Colleges.

NOTE: Authority cited: Sections 19815.4 and 19820, Government Code. Reference: Sections 11030 and 13920, Government Code; and Title 2, California Administrative Code, Div. 2, Ch. 1, Section 714.

HISTORY

1. New section filed 10–15–82 as an emergency; effective upon filing (Register 82, No. 42). A Certificate of Compliance must be transmitted to OAL within 180 days or emergency language will be repealed on 4–13–83.

2. Repealed by operation of Government Code Section 11346.1(g) (Register 83, No. 37).

§ 599.633. Travel Allowances While on Sick Leave, Vacation or Compensating Time Off (CTO).

(a) When a state officer or employee is granted sick leave while away from his/her headquarters for purposes of state business, such officer or employee may claim reimbursement for travel expenses in accordance with the allowances prescribed by these rules during such sick leave, provided the allowances for travel expenses shall not be authorized for a period exceeding three days. The time limitation prescribed by this section may be exceeded in unusual cases approved by the Department of Personnel Administration.

(b) When a state officer or employee is authorized time off on vacation or CTO while away from his/her headquarters on state business, reimbursement for subsistence allowance during such vacation or CTO may not be claimed. The provisions of this section may be waived by an agency for employees claiming other than short–term allowances who are (1) authorized time off on CTO, or (2) employees in seasonal agricultural work authorized time off on vacation.

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19820, Government Code. Reference: Section 11030, Government Code.

HISTORY

1. New section filed 2–9–84 (corrected copy refiled 2–27–84); effective thirtieth day thereafter (Register 84, No. 8).

2. Editorial correction of HISTORY NOTES printed in error in Register 84, Nos. 8 and 12 (Register 84, No. 15).

§ 599.633.1. Travel Reimbursements While on Sick Leave, Vacation, Other Paid Leave, or Compensating Time Off (CTO)—Excluded Employees.

(a) When a state officer or employee is granted sick leave while away from his/her headquarters for purposes of state business, the appointing authority may approve such office or employee to claim reimbursement for actual travel expenses not to exceed the maximums prescribed by these rules during such sick leave, for a period not to exceed three days. This time limitation may be extended in unusual cases approved by the appointing power, when either the employee is unable to travel, or when it is more economical for the state to maintain the employee on sick leave and travel status in order to complete the assignment.

[The next page is 79.]

(b) When a state officer or employee is authorized time off for vacation or CTO while away from his/her headquarters on state business, reimbursement for travel expenses during such vacation or CTO shall not be paid.

(c) The appointing power may make exceptions for employees on long term assignments for long term lodging expenses only that are incurred at the long term location and will continue during the employee's absence.

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19820, Government Code. Reference: Section 11030, Government Code.

HISTORY

1. New section filed 12–27–95; operative 1–1–96. Submitted to OAL for printing only pursuant to Government Code section 3539.5 (Register 95, No. 52).

§ 599.634. Expenses of Applicants Who Are Called for Interview.

Reimbursement may be allowed for expenses of professional and technically trained applicants for state employment who are called for employment interviews.

(a) Written approval of the Department of Personnel Administration must be obtained before the applicant is called for the interview.

(b) The applicant must have been called for the interview regarding a position in a classification for which it has been certified that such expenditure is necessary in order to recruit qualified persons needed by the State. Certification must be made by the appointing power and the Department of Personnel Administration.

(c) Reimbursement of actual transportation expenses will be allowed in an amount not to exceed ground transportation to and from the nearest airport and one round trip air coach fare, plus applicable tax, between the place from which the applicant was called and the place where the interview is held. However, if an applicant is called from outside the boundaries of the United States, reimbursement shall apply only to that portion of the fare for travel within the United States.

(d) The Department of Personnel Administration may authorize the reimbursement of all or part of lodging and meal expenses in the place where the interview is held, when the appointing power has demonstrated the following:

(1) Reasonable efforts were made to coordinate applicant's transportation and interview schedule;

(2) Available transportation options were explored with regard to timeliness and convenience;

(3) Resulting interview and transportation arrangements reasonably required the applicant to incur the cost for which reimbursement is being claimed.

Reimbursement for these expenses shall be limited to the time period that is directly related to the candidate's scheduled interview. Reimbursement shall not be authorized for time spent at the interview location resulting from the candidate's decision to remain for personal reasons.

Meals and lodging expenses will be reimbursed at a rate not to exceed those noted in Section 599.619.

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19820, Government Code. Reference: Sections 11030 and 19842, Government Code.

HISTORY

1. New section filed 2–9–84 (corrected copy refiled 2–27–84); effective thirtieth day thereafter (Register 84, No. 8).
2. Editorial correction of HISTORY NOTES printed in error in Register 84, Nos. 8 and 12 (Register 84, No. 15).
3. Amendment filed 2–20–86; effective thirtieth day thereafter (Register 86, No. 8).
4. Editorial correction of paragraph following subsection (d)(3) (Register 95, No. 37).

§ 599.635. Attending Conventions, Conferences, or Business Meetings.

(a) All regulations governing short–term travel and subsistence allowances will apply except employees may be reimbursed for actual subsistence expenses, supported by voucher, when the convention or conference is planned and arranged by a non–state agency if such expenses are beyond the control of the employees.

(b) Registration fees will be allowed except for conventions or conferences called by a state agency for the dissemination of information to its own employees. Reimbursement for registration fees exceeding $50 must be approved by the department head or delegated representative.

(c) Where more than two individuals (officers or employees) from the same department are attending the same convention or conference, each claim must be approved by the department head or delegated representative. This requirement does not apply to a convention or conference called by a state department for purposes of instruction or dissemination of information to its own officers or employees.

(d) Exceptions to these regulations may be approved in advance by the Department of Personnel Administration.

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19820, Government Code. Reference: Section 11030, Government Code.

HISTORY

1. New section filed 2–9–84 (corrected copy refiled 2–27–84); effective thirtieth day thereafter (Register 84, No. 8).
2. Editorial correction of HISTORY NOTES printed in error in Register 84, Nos. 8 and 12 (Register 84, No. 15).
3. Editorial correction of HISTORY 1 (Register 95, No. 37).

§ 599.635.1. Attending Conferences, Conventions—Excluded Employees.

For the purposes of this rule a conference or convention is a meeting, with a formal agenda, of persons to discuss or consult on specific work related subjects with the purpose of exchanging views, providing lecture or dialogue or providing or gaining skills and/or information for the good of the State.

(a) Under the direction of the Appointing Power, a State Sponsored Conference or Convention is planned and arranged by one or more state agencies for the benefit of the state and/or outside parties for the purpose of conducting State business. Specifically excluded is any event, meeting or gathering initiated by a state agency for dissemination of information to its own departmental employees. Costs and reimbursements for State Sponsored conferences are subject to the exclusions in (c) below. Approval for any individual employee's attendance or participation in a State Sponsored conference is at the sole discretion of the appointing authority. In planning and contracting any State sponsored conference, consideration is to be given to State–owned facilities and interagency meeting facilities, responsible scheduling, cost effective lodging and meal expenses, awareness of the public perception of state employee activities, and the overall mission of the event.

(1) Meals. Meals that are determined to be an integral part of the conference may be provided if the conference continues to be conducted while the meal is served and consumed. Conference planners may contract for the conference meals at reasonable meal rates and such costs may be included in registration fees for the event. Meals not included in registration fees or not provided as part of the conference will be reimbursable in accordance with 599.619. Meals provided shall not be claimed or reimbursed.

(2) Lodging. Lodging may or may not be negotiated as a part of the conference package. When it is appropriate to contract for lodging, rates will be negotiated in the best interest of the State, at the lowest rate possible to a maximum of $110, and be based only on those individuals who would normally spend the night considering the distance and duration of their travel status as defined in section 599.619.

(b) Non–state sponsored conference or convention.

(1) At the discretion of the appointing power, and if not included in a registration fee or otherwise provided, and subject to the restrictions in item (c), employees may be reimbursed for actual meals and lodging expenses included in the conference, supported by receipts. Meals and lodging not contracted for the event shall be reimbursable at the rates set forth in 599.619.

(2) At the discretion of the appointing power, but in accordance with (c) below, registration fees may be reimbursed totally or in part, based

on the State interest being served, the needs of the department and the costs incurred.

(c) Specifically excluded from this rule are:

(1) Meetings initiated by a department for employees of that same department.

(2) Conference meals that are secondary to the business being conducted, or that are optional, or that are organized for social purposes.

(3) Any activities or expenses related to recreation, sports, entertainment or tourism.

(4) Any expense for alcoholic beverages.

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19820, Government Code. Reference: Section 11030, Government Code.

HISTORY

1. New section filed 12–27–95; operative 1–1–96. Submitted to OAL for printing only pursuant to Government Code section 3539.5 (Register 95, No. 52).

§ 599.636. Return of Deceased Employees.

When a state officer or employee dies while travelling on official state business, reimbursement may be claimed for actual and reasonable expenses incurred in returning the remains to the place of burial, up to the amount necessary to return the remains to the official headquarters of the deceased. Claims for the reimbursement of such expenses shall be submitted to the State Controller by the person responsible for payment of the funeral expenses. Each claim shall bear a certification by the appointing power that the employee was travelling on official state business at the time of his/her death. Actual costs of the following will be considered necessary travel expenses for which reimbursement will be made.

(a) In all cases, regardless of mode of transportation:

(1) Telephone or telegraph charges for shipment arrangements.

(2) Transportation of the remains to the funeral home, preparing the remains for shipment, not in excess of $1 per 1.6 kilometers (mile) one way.

(b) When a portion of the shipment is by common carrier:

(1) Transportation by common carrier to the receiving point nearest the official headquarters or place of burial, whichever is less.

(2) Transportation not in excess of 50 cents per 1.6 kilometers (mile) one way from a funeral home to a shipping station and from the receiving station determined by paragraph (1) above to the headquarters location or place of burial, as applicable.

(3) Outside transportation case and casket or rental metal transfer case, not to exceed $100 plus taxes.

(c) When shipment is made by funeral coach alone, transportation costs not to exceed 50 cents per 1.6 kilometers (mile) one way, from the pick–up point to the city in which the official headquarters of the deceased was located, or to the place of burial, whichever is the shorter distance.

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19820, Government Code. Reference: Sections 19849.3 and 19463, Government Code.

HISTORY

1. New section filed 2–9–84 (corrected copy refiled 2–27–84); effective thirtieth day thereafter (Register 84, No. 8).
2. Editorial correction of HISTORY NOTES printed in error in Register 84, Nos. 8 and 12 (Register 84, No. 15).

§ 599.636.1. Return of Deceased Employees—Excluded.

When a state officer or employee dies while travelling on official state business, reimbursement may be claimed for actual and reasonable expenses incurred in transporting, in state, the remains to the place of burial, (up to the amount necessary to return the remains) or to the official headquarters of the deceased. Claims for the reimbursement of such expenses shall be submitted to the State Controller by the person responsible for payment of the funeral expenses. Each claim shall bear a certification by the appointing power that the employee was travelling on official state business at the time of his/her death. Actual costs of the following will be considered necessary travel expenses for which reimbursement will be made.

(a) In all cases, regardless of mode of transportation:

(1) Telephone or telegraph charges for shipment arrangements.

(2) Transportation of the remains to the funeral home and preparing the remains for shipment.

(b) When a portion of the shipment is by common carrier.

(1) Transportation by common carrier to the receiving point nearest the official headquarters or place of burial in the state where headquartered.

(2) Transportation one way from a funeral home to a shipping station and from the receiving station determined by paragraph (1) above to the headquarters location or place of burial, as applicable.

(3) Outside transportation case or metal transfer case as required.

(c) When shipment is made by funeral coach alone, reasonable transportation costs for mileage one way, from the pick–up point to the city in which the official headquarters of the deceased was located, or to the place of burial in that state, whichever is designated by the surviving responsible party.

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19820, Government Code. Reference: Sections 19849.3 and 19463, Government Code.

HISTORY

1. New section filed 12–27–95; operative 1–1–96. Submitted to OAL for printing only pursuant to Government Code section 3539.5 (Register 95, No. 52).

§ 599.637. Nonsalaried Assistance; State Personnel Board.

(a) When persons provide nonsalaried assistance to the State Personnel Board or to another state department delegated by the State Personnel Board, in the preparation or conduct of written or oral examinations for state civil service, he/she may be reimbursed for necessary travel expenses as prescribed by these regulations for nonsalaried board and commission members.

(b) Meal expenses may be paid by State Personnel Board staff or the staff of the delegated state department. The expense account shall show the name of each person for whom payments were made.

NOTE: Authority cited: Sections 19815.4(d), 19816, 19820 and 19822.5, Government Code. Reference: Sections 19820 and 19822.5, Government Code.

HISTORY

1. New section filed 2–9–84 (corrected copy refiled 2–27–84); effective thirtieth day thereafter (Register 84, No. 8).
2. Editorial correction of HISTORY NOTES printed in error in Register 84, Nos. 8 and 12 (Register 84, No. 15).

§ 599.638. Expense Account Form.

(a) No travel expense account shall be paid unless submitted on a Travel Expense Claim, Standard Form 262 or some other form approved by the Controller. All expense accounts shall be itemized, accompanied by the necessary vouchers and approved by the authorized officer. It is the responsibility of the officer approving the claim to ascertain the necessity and reasonableness of incurring expenses for which reimbursement is claimed.

(b) Expense accounts shall be submitted at least once a month and not more than twice a month. If the amount claimable for any month does not exceed $10, the filing may be deferred until the total amount claimable exceeds $10 or until June 30, whichever occurs first. Travel expenses claimed for July 1 and beyond must be on a separate travel expense claim from those claimed for June 30 or earlier. Expense accounts totaling less than $1 shall not be submitted or paid.

(c) Each officer and employee making a claim for travel expenses must show the inclusive dates of each trip for which allowances are claimed and the times of departure and return. Time of departure and return means the time employee starts from or returns to his/her office or, when leaving on a trip or returning from a trip without going to the office, his/her home.

(d) Each officer and employee must state the purpose of each trip for which reimbursement is claimed, and for each meal for which reimbursement is claimed under Sections 599.622 or 599.623 or 599.635.

(e) Each state officer and employee must show his/her headquarters address and primary dwelling address on the Travel Expense Claim. Employees claiming subsistence expenses pursuant to Section 599.619(b)(1) or 599.621(b)(1), as appropriate, will show their headquarters address as the address of their primary dwelling.

(f) Each claim for the payment of travel expenses shall contain a certification as follows: I hereby certify that the above is a true statement of the travel expenses incurred by me in accordance with Department of Personnel Administration regulations in the service of the State of California, and that all items shown were for the official business of the State of California.

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19820, Government Code. Reference: Section 11030, Government Code.

HISTORY

1. New section filed 2–9–84 (corrected copy refiled 2–27–84); effective thirtieth day thereafter (Register 84, No. 8).
2. Editorial correction of HISTORY NOTES printed in error in Register 84, Nos. 8 and 12 (Register 84, No. 15).

§ 599.638.1. Expense Claim Form—Excluded Employees.

(a) No travel expense claim shall be paid unless submitted on a Travel Expense Claim, Standard Form 262 or some other form approved by the Controller. All expense claims shall be itemized, accompanied by the necessary receipts and supporting documentation and approved by the authorized officer(s). It is the responsibility of the officer approving the claim to ascertain the necessity and reasonableness of incurring expenses for which reimbursement is claimed and that the expenses claimed are in compliance with these regulations.

(b) Expense claims shall be submitted at least once a month and not more than twice a month. If the amount claimable for any month does not exceed $10, the filing may be deferred until the total amount claimable exceeds $10 or until June 30, whichever occurs first. Travel expenses claimed for July 1 and beyond must be on a separate travel expense claim from those claimed for June 30 or earlier. Expense claims totaling less than $1 shall not be submitted or paid.

(c) Each officer and employee making a claim for travel expenses must show the inclusive dates of each trip for which allowances are claimed and the times of departure and return. Time of departure and return means the time employee starts from or returns to his/her office or, when leaving on a trip or returning from a trip without going to the office, his/her home.

(d) Each officer and employee must state the purpose of each trip for which reimbursement is claimed, and for each meal for which reimbursement is claimed under Sections 599.622.1, 599.623.1 or 599.635.1.

(e) Each state officer and employee must show his/her headquarters address and primary dwelling address on the Travel Expense Claim. Employees claiming subsistence expenses pursuant to Section 599.619.1(b)(1) will show their headquarters address as the address of their primary dwelling.

(f) Each claim for the payment of travel expenses shall contain a certification as follows: I hereby certify that the above is a true statement of the travel expenses incurred by me in accordance with Department of Personnel Administration regulations in the service of the State of California, and that all items shown were for the official business of the State of California.

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19820, Government Code. Reference: Section 11030, Government Code.

HISTORY

1. New section filed 12–27–95; operative 1–1–96. Submitted to OAL for printing only pursuant to Government Code section 3539.5 (Register 95, No. 52).
2. Editorial correction of subsection (a) (Register 96, No. 38).

Article 3. Valuation of Employee Housing and Services

§ 599.640. Scope.

This article shall apply to all housing accommodations provided by the State to its employees for residence except the following:

(a) Employees while in travel status.

(b) Employees whose pay and allowances are computed according to federal military pay regulations, provided such employees actually do not receive a quarters allowance when assigned to state–owned employee housing.

(c) Employees entitled to receive housing as compensation for services.

(d) Accommodations acquired by the State for eventual disposal which are rented to employees on the same basis as to private tenants and are not primarily provided for employee housing.

NOTE: Authority cited: Sections 19815.4(d) and 19816, Government Code. Reference: Section 19822, Government Code.

HISTORY

1. New Article 3 (Sections 599.640–599.652, not consecutive) filed 9–6–83; effective thirtieth day thereafter (Register 83, No. 37).

CROSS REFERENCE: See Title 2, Chapter 1, Sections 850–868.

§ 599.641. Definitions.

(a) Housekeeping accommodations are those units of 501 or more square feet which contain regular cooking facilities. Non–housekeeping accommodations are those which do not contain regular cooking facilities, and all units of 500 or less square feet.

(b) Square feet encompasses the entire building area except porches, garages, basements, and attics unless they have been converted to usable living area.

(c) Square footage is calculated by multiplying the interior living area length times the width.

(d) Areas officially set aside as state offices will not be included in the calculation of square feet to compute rental charges.

(e) Housing is in Location Class 1 when it is within 25 miles and not more than 40 minutes travel time, one way, of a community with 2,500 or more year–round population. All other housing is in Location Class 2.

NOTE: Authority cited: Sections 19815.4(d) and 19816, Government Code. Reference: Section 19822, Government Code.

§ 599.642. Monthly Rates.

(a) The monthly rates for housing units are shown in the following table in accordance with the unit's housekeeping or non–housekeeping arrangement, age, location, and square footage. For the purposes of this section, housing is one year old when constructed and becomes one year older each January 1st.

LOCATION CLASS 1

	HOUSEKEEPING Age in Years					*NON-HOUSEKEEPING Age in Years*				
Square Feet..	1–20	21–40	41–60	61–80	81+	1–20	21–40	41–60	61–80	81+
5000+	238	218	200	184	169	–	–	–	–	–
4001–5000	200	184	169	154	142	–	–	–	–	–
3001–4000	169	154	142	130	119	–	–	–	–	–
2501–3000	142	130	119	108	98	–	–	–	–	–
2001–2500	130	119	108	98	89	–	–	–	–	–
1501–2000	119	108	98	89	81	–	–	–	–	–
1001–1500	108	98	89	81	74	–	–	–	–	–
751–1000	98	89	81	74	68	49	44	40	37	34
501–750	89	81	74	68	62	44	40	37	34	31
1–500	81	74	68	62	56	40	37	34	31	28

LOCATION CLASS 2

	HOUSEKEEPING Age in Years					*NON-HOUSEKEEPING Age in Years*				
Square Feet..	1–20	21–40	41–60	61–80	81+	1–20	21–40	41–60	61–80	81+
5000+	143	133	122	112	103	–	–	–	–	–
4001–5000	122	112	103	95	87	–	–	–	–	–
3001–4000	103	95	87	80	74	–	–	–	–	–
2501–3000	87	80	74	67	61	–	–	–	–	–
2001–2500	80	74	67	61	55	–	–	–	–	–
1501–2000	74	67	61	55	50	–	–	–	–	–
1001–1500	67	61	55	50	45	–	–	–	–	–
751–1000	61	55	50	45	41	30	27	25	22	20
501–750	55	50	45	41	37	27	25	22	20	18
1–500	50	45	41	37	33	25	22	20	18	16

(b) If one or more utilities are not paid directly by the employee, increase the monthly charge as follows:

		Water	Fuel	Electricity	Total
LOCATION CLASS 1	Housekeeping	3.50	9.00	9.00	21.50
	Non–Housekeeping	1.75	4.50	4.50	10.75
LOCATION CLASS 2	Housekeeping	5.50	15.00	15.00	35.50
	Non–Housekeeping	2.75	7.50	7.50	17.75

(c) When essential housing is substandard, the Department of Personnel Administration may reduce the rental rate to a lower category.

(1) Housing is essential if an employee is required to live in the unit for the protection of state property or a closely related purpose.

(2) Essential housing is substandard when at least one of the following conditions exists:

(A) Privacy: the normal household routine is repeatedly interrupted.

(B) Reliability and adequacy of utility service: light, heat and/or water are not available in sufficient quantities throughout the year to permit a normal household routine.

(C) Overall size: residence is inadequate for or far exceeds employee's needs.

(D) Disturbing noises or offensive odors: the normal household routine is repeatedly interrupted.

(E) Overall design: inconvenient arrangement of living quarters.

(F) Seasonal inaccessibility: the employee may leave the premises only if willing to travel under dangerous conditions during a typical season.

(G) Extreme isolation: the residence is located at least 50 miles or one hour travel time from the nearest community of at least 2,500 population.

(d) Notwithstanding the other provisions of this section, the monthly charge for a housing unit shall be at least $16.00. This does not apply to dormitory accommodations.

NOTE: Authority cited: Sections 19815.4(d) and 19816, Government Code. Reference: Section 19822, Government Code.

§ 599.643. Dormitory Accommodations.

(a) A dormitory is a housing unit:

(1) Occupied by two or more unrelated employees, or

(2) Which must be vacated monthly to accommodate a relief employee, or

(3) Unsuitable for housing dependents of employees, or

(4) Which provides sleeping accommodations for more than one employee in a single room.

(b) The monthly rate for each available accommodation shall be:

(1) $18 per month in Location Class 1

(2) $12 per month in Location Class 2

(c) The following are exceptions to this rule:

(1) Forest fire lookout stations shall have no rental charge.

(2) Employees occupying dormitory accommodations for any day, or any portion thereof, when occupancy of the dormitory is required by the job and is necessary for availability and/or reduced response time to maintain public safety will not be required to pay rent for that day.

(3) Employees occupying dormitory accommodations for less than a complete pay period shall pay $.75 per day to a maximum of $18 per month in Location Class 1 or $.50 per day to a maximum of $12 per month in Location Class 2.

NOTE: Authority cited: Sections 19815.4(d) and 19816, Government Code. Reference: Section 19822, Government Code.

§ 599.644. Monthly Rental and Utility Rates—Nonrepresented Employees.

(a) State–owned housing units consist of: houses, apartments, dormitories, mobile homes, trailers, mobile home pads and trailer spaces. The Department of Personnel Administration shall be the final authority for determining the monthly rental and utility rates for all state–owned housing. However, the Department of Personnel Administration may delegate the rate setting authority to appointing powers that possess state–owned housing units.

(b) The Department of Personnel Administration may review and adjust the monthly rate of any state–owned housing unit when there is evidence presented that the prescribed monthly rate is inequitable.

(c) At the direction of the Department of Personnel Administration, and pursuant to its delegation of such statutory authority, the appointing powers shall review the monthly rental and utility rates every year and report the rates to the Department of Personnel Administration.

(d) When essential housing is substandard, the appointing power may reduce the rental rate.

(1) Housing is essential if an employee is required to live in the unit for the protection of state property or a closely related purpose.

(2) Essential housing is substandard when at least one of the following conditions exists:

(A) Privacy: the normal household routine is repeatedly interrupted.

(B) Reliability and adequacy of utility service: light, heat and/or water are not available in sufficient quantities throughout the year to permit a normal household routine.

(C) Overall size: residence is inadequate for or far exceeds employee's needs.

(D) Disturbing noises or offensive odors: the normal household routine is repeatedly interrupted.

(E) Overall design: inconvenient arrangement of living quarters.

(F) Seasonal inaccessibility: the employee may leave the premises only if willing to travel under dangerous conditions during a typical season.

(G) Extreme isolation: the residence is located at least 50 miles or one hour travel time from the nearest community of at least 2,500 population.

(e) Monthly space rental for a privately–owned trailer or mobile home shall be at least $12.00 per month.

(f) Notwithstanding the other provisions of this section, the monthly charge for a housing unit shall be at least $20.00. This does not apply to dormitory accommodations.

(g) If utilities are not purchased directly by the employee, utility charges will be added to the monthly rental rate.

NOTE: Authority cited: Sections 35178.8, 19815.4(d) and 19816, Government Code. Reference: Section 19822, Government Code.

HISTORY

1. Amendment filed 11–5–87; operative 11–5–87 (Register 87, No. 46).
2. Amendment filed by the Department of Personnel Administration with the Secretary of State on 12–7–88; operative 12–7–88. Submitted to OAL for printing only pursuant to Government Code Section 11343.8 (Register 89, No. 4).
3. Editorial correction of subsection (a) (Register 95, No. 37).

§ 599.645. Trailer and Mobile Home Charges.

(a) The monthly rates and utility charges for trailers or mobile homes, including basic furnishings are shown in the following table in accordance with the unit's age, location, and total floor space. For the purposes of this rule, a trailer is one year old when constructed and becomes one year older each January 1st. The total floor space shall be determined by multiplying the trailer length times the width using the outside wall dimensions of the full expanded unit.

	Floor Space Square Feet	Age in Years		Utility Charge			
		Under 6	6 and Over	Total	Water	Fuel	Electricity
LOCATION CLASS ONE	800+	78	67	22.00	4.40	8.80	8.80
	600-799	61	52	19.40	3.90	7.75	7.75
	400-599	44	38	16.20	3.20	6.50	6.50
	200-399	26	23	13.60	2.80	5.40	5.40
	0-199	16	15	11.00	2.20	4.40	4.40
	Substandard	10	8	-			
LOCATION CLASS TWO	800+	66	52	22.00	4.40	8.80	8.80
	600-799	51	41	19.40	3.90	7.75	7.75
	400-599	37	29	16.20	3.20	6.50	6.50
	200-399	22	17	13.60	2.80	5.40	5.40
	1-199	13	9	11.00	2.20	4.40	4.40
	Substandard	7	5	-			

(b) Monthly space rental charge for a privately owned trailer is $9.00 per month.

(c) When an essential mobile home or trailer is substandard, the Department of Personnel Administration may reduce the rental rate to a lower square foot category. Space rental charge for a privately owned mobile home may be reduced by 25 percent.

(1) A mobile home or trailer is essential if an employee is required to live in the unit for the protection of state property or a closely related purpose.

(2) Essential mobile home or trailer is substandard when at least one of the following conditions exists:

(A) Privacy: the normal household routine is repeatedly interrupted.

(B) Reliability and adequacy of utility service: lights, heat and/or water are not available in sufficient quantities throughout the year to permit a normal household routine.

(C) Overall size: residence is inadequate for or far exceeds employee's needs. (Applicable only to state–owned units.)

(D) Overall design: inconvenient arrangement of living quarters.

(E) Disturbing noises or offensive odors: the normal household routine is repeatedly interrupted.

(F) Seasonal inaccessibility: the employee may leave the premises only if willing to travel under dangerous conditions during a typical season.

(G) Extreme isolation: the residence is located at least 50 miles or one hour travel time from the nearest community of at least 2,500 population.

(d) If utilities are not purchased directly by the employee, utility charges will be added to the monthly rent according to the table in Section 599.645(a).

NOTE: Authority cited: Sections 19815.4(d) and 19816, Government Code. Reference: Section 19822, Government Code.

§ 599.645.1. Trailer and Mobile Home Rental and Utility Rates—Nonrepresented Employees.

NOTE: Authority cited: Section 3517.8, Government Code. Reference: Section 19822, Government Code.

HISTORY

1. New section filed 11–5–87; operative 11–5–87 (Register 87, No. 46).
2. Repealer filed by the Department of Personnel Administration with the Secretary of State on 12–7–88; operative 12–7–88. Submitted to OAL for printing only pursuant to Government Code Section 11343.8 (Register 89, No. 4).

§ 599.646. Responsibility of State Agencies for Administering Rental Schedule for Employee Housing.

(a) Each state agency which provides housing accommodations for employees is delegated the authority and responsibility to:

(1) apply rental rates in accordance with these regulations and to adjust rates as required by changes in age and other factors;

(2) economically maintain housing in good repair;

(3) dispose of housing which cannot be economically maintained.

(b) Agency heads may further delegate this authority and responsibility at their discretion to institution superintendents, wardens, district officers and other subordinates, subject to the basic responsibility of the agency head for compliance with these regulations. In any instance where the rental rate for an accommodation is computed by the employee to whom it is assigned, or by a subordinate of such employee, the rate must be reviewed and approved by a supervisor of the occupant.

NOTE: Authority cited: Sections 19815.4(d) and 19816, Government Code. Reference: Section 19822, Government Code.

§ 599.647. Responsibility of the Department of Personnel Administration.

The Department of Personnel Administration shall be responsible for reviewing any special rental problems referred by operating departments and for adjusting regulations when these regulations cannot be reasonably or equitably applied.

NOTE: Authority cited: Sections 19815.4(d) and 19816, Government Code. Reference: Section 19822, Government Code.

§ 599.648. State Policy on Possessory Interest Taxes.

Employees occupying state–owned housing will not be reimbursed for possessory interest taxes levied by, and paid by them to, local government jurisdictions. The Department of Personnel Administration will consider the effect of such taxes in its periodic reviews and adjustments will be made in the rental rates prescribed by these regulations, as required, with the objective of maintaining equality between state employees renting state–owned housing and individuals renting privately–owned housing.

NOTE: Authority cited: Sections 19815.4(d) and 19816, Government Code. Reference: Section 19822, Government Code.

§ 599.649. Household Furnishings.

No articles of household furnishings not included in the "Maximum List of Basic Furnishings for Housekeeping Quarters to be Provided by the State" prepared by the Department of Finance may be supplied with housekeeping apartments and homes.

NOTE: Authority cited: Sections 19815.4(d) and 19816, Government Code. Reference: Section 19822, Government Code.

§ 599.650. Laundry Service.

Certain state institutions operate laundries. Services of these facilities may be furnished to state employees in accordance with the conditions and restrictions prescribed herein.

(a) A department operating state institutions may authorize any of its institutions to furnish "duty" laundry free of charge to employees. Duty laundry is defined as uniforms required to be worn by employees as a condition of employment.

(b) A department operating state institutions may authorize any of its institutions to furnish free of charge household laundry to occupants of employee non–housekeeping rooms and suites of rooms at the institution. Household laundry is defined as bedding, bed linens, and towels. Employees and their families renting state–owned housekeeping quarters on institutional grounds may be furnished household laundry service on a piece–rate charge basis sufficient to cover the costs of all supplies, materials, delivery, and labor incident to the furnishing of such service, provided the employees are living on the grounds of an institution which operates a laundry of adequate capacity or which receives laundry service from another state institution operating such a laundry. The Department of Corrections may additionally authorize such service to employees living outside of the institutional grounds, as stipulated in paragraph (c) below.

(c) Personal laundry includes clothing and all other household textile items not defined above which are commonly sent out of a household for periodic washing. A department operating state institutions may authorize any of its institutions which operates a laundry of adequate capacity or which receives laundry service from another state institution operating such a laundry to furnish personal laundry service to occupants of state–owned employee non–housekeeping rooms and suites of rooms on institutional grounds. The charges for this service will be on a piece–rate basis sufficient to cover the costs of all supplies, materials, delivery, and labor incident to the furnishing of such service. The Department of Corrections may additionally authorize any institution under its supervision which has an institutional laundry of adequate capacity to provide household and personal laundry service to employees and their families who do not live on the institutional grounds. Charges for personal laundry service to employees living off the grounds will be the same as for employees living on the grounds; pick–up or delivery service will not be furnished by the State to employees at any location off the institutional grounds.

(d) Articles of laundry belonging to state employees which are lost or damaged in institutional laundry operations will not be replaced or paid for from state funds. Employees who take advantage of the state–operated laundry service facilities will accept the risk of such loss or damage.

(e) A department which may authorize the furnishing of laundry service to some of its employees may discontinue such service at any time; it may limit the types or quantity of articles which will be laundered; and in any other manner not in conflict with these rules, it may set such conditions as it may deem advisable upon laundry service to employees. There is no requirement for similarity of service, charges, or authorization for laundry service at institutions within a department.

NOTE: Authority cited: Sections 19815.4(d) and 19816, Government Code. Reference: Section 19822, Government Code.

§ 599.651. Dry Cleaning Service.

(a) The Department of Corrections may authorize prisons under its supervision with institutional dry cleaning plants of adequate capacity to furnish dry cleaning service to prison employees at piece rates sufficient to cover the costs of all supplies, materials, and labor incident to the furnishing of such services. Pick–up or delivery service will not be furnished by the State to employees at any location off the institutional grounds.

(b) Articles belonging to state employees which are lost or damaged in prison–operated dry cleaning facilities will not be replaced or paid for

from state funds. Employees who take advantage of the prison–operated dry cleaning service will accept the risk of such loss or damage.

(c) The Department of Corrections may discontinue dry cleaning service to employees at any of its institutions at any time; it may limit the types or quantity of articles which will be cleaned; and in any other manner not in conflict with these regulations, it may set such conditions as it may deem advisable upon dry cleaning service to employees. There is no requirement for similarity of service, charges, or authorization for dry cleaning service between any two institutions in the department.

NOTE: Authority cited: Sections 19815.4(d) and 19816, Government Code. Reference: Section 19822, Government Code.

§ 599.652. Meals at State Agencies.

(a) Some state agencies operate kitchens and eating facilities, generally to provide meals for prisoners, wards, students, or inmates at institutions or for personnel working at isolated sites. State employees, their dependents, and official visitors may utilize the services of these facilities in accordance with the conditions and restrictions prescribed herein. In cases where employees of a federal or local government agency rendered services to the State at the request of the State, they may also utilize the facilities. Excluded from the provisions of this section are facilities operated in connection with the State Colleges and the University, and those facilities managed by blind personnel under the supervision of the Department of Rehabilitation and located in buildings occupied by other agencies.

(b) With the exceptions listed below, all state employees, their dependents, federal and local government employees, and official visitors who receive meals prepared in state–operated kitchens will pay for each meal in accordance with the established rates. Exceptions are personnel in the following categories, who will receive meals free of charge:

(1) State employees receiving maintenance as part of their compensation.

(2) State employees receiving meals in accordance with Sections 599.622 and 599.623.

(3) Persons receiving meals as part of an activity in which they are performing a non–compensated, volunteer service for the State.

(4) Official Guests. An official guest of a facility is a person not otherwise employed by the State who:

(A) renders a service to the State and is present at the facility by express invitation of an official of the facility or its parent department or agency.

(B) is present at the facility by request of another state, the Federal Government, or a foreign country, with the approval of the parent department or agency, or

(C) is a judge or law enforcement officer and is present at the facility for the purpose of appraising the program, with the approval of the parent department or agency.

(5) State employees while away from their headquarters and not in a subsistence reimbursement status, who may be furnished meals at any institution, camp or facility maintained by their own department.

(6) Employees receiving meals while participating in an approved supplemental education program which must be conducted during mealtime.

(c) The rates to be charged for meals at any location shall be established by the agency which prepares the meals. Rates will be determined in accordance with the following regulations:

(1) Rates will be sufficient to cover the pro–rata cost per meal for food and beverages plus the labor involved in preparing and serving the meal. Where a certain amount of labor is already required to furnish meals to students, prisoners, wards, etc., only the cost of any additional labor required will be considered. At work camp facilities the cost of labor need not be considered. In addition to the charges for meals, each agency will collect sales taxes on meals as applicable.

(2) Within an agency, a single rate may be established for several locations, where the combined cost per meal of food and labor is substantially the same at each location.

(3) No distinction will be made in rates for breakfast, lunch, and dinner.

(4) No distinction will be made in rates for different age groups.

(5) At work camp facilities where subsistence is furnished, reimbursement to the State for meal charges may be made by payroll deductions.

(6) Rates will be reviewed at least once every two years and revised if necessary to compensate for changes in applicable costs.

(d) Each agency shall maintain records showing:

(1) The value of all supplies issued to officers and employees of the agency for their maintenance.

(2) The numbers of meals served to officers and employees, their dependents, official guests, and all other persons.

(3) The amounts collected in payment for food and lodging.

(e) All sums collected by an agency for meals and lodging shall be remitted to the State Treasurer for credit to the current support appropriation.

NOTE: Authority cited: Sections 19815.4(d) and 19816, Government Code. Reference: Section 19822, Government Code.

§ 599.653. (Reserved)

§ 599.654. (Reserved)

Article 4. Employee Merit Award Board

§ 599.655. Definitions.

(a) Employee Suggestion. A proposal by one or more employees which will reduce or eliminate State expenditures, or improve operations, procedures, or safety.

(b) Special Act. An extraordinary act of heroism by a State employee extending far above and beyond the normal call of duty or service performed at great risk to his/her own life in an effort to save human life.

(c) Special Service. An act of heroism by a State employee extending above and beyond the normal call of duty or service performed at personal risk to his/her safety to save human life or State property.

(d) Superior Accomplishment. Performance by an individual employee, or team of employees, which results in an exceptional contribution to improving California State Government.

(e) Merit Award Program. The statewide program, administered by the Department of Personnel Administration (DPA), responsible for establishing policy and guidelines for the administration of the State's Merit Award Program.

(f) State Agency. State departments, boards, and commissions responsible for the review and disposition of suggestions submitted by State employees under the regulations applicable to the State's Merit Award Program.

(g) Director. State department director, agency head, executive officer of boards/commissions, chancellor of community colleges or their designee.

(h) Merit Award Administrator. Person designated by the State department director, agency head, executive officer of boards/commissions, or chancellor of community colleges to be responsible for the administration of the State's Merit Award Program within his/her respective department.

(i) Merit Award. An award for an adopted suggestion which results in an intangible benefit and/or identifiable tangible benefit shall be a certificate of award and a payment of cash. An award for an approved special act, special service, or superior accomplishment shall be a scroll, ribbon, medal, pin, gift, or other appropriate token of esteem, and may include a payment of cash.

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19823, Government Code. Reference: Section 19823, Government Code.

HISTORY

1. New section filed 2–9–84 (corrected copy refiled 2–27–84); effective thirtieth day thereafter (Register 84, No. 8).
2. Editorial correction of HISTORY NOTES printed in error in Register 84, Nos. 8 and 12 (Register 84, No. 15).

3. Amendment filed 12–2–92; operative 1–2–93 (Register 94, No. 8).
4. Amendment filed 9–19–96; operative 10–19–96 (Register 96, No. 38).

§ 599.656. State Merit Award Board.

(a) The State Merit Award Board, referred to as the Board, will consist of five members.

(b) Membership. A representative of DPA, to be designated by the Director, shall be ex officio a voting member of the Board and shall serve as chair. The Director shall appoint the four other members including a public member.

(c) Term of Office. Members of the Board shall hold office until their resignation or until their successors are appointed.

(d) Meetings. Board meetings shall be held on a regular basis with dates and time to be determined by the chair. Meetings shall be public and interested persons shall be given reasonable opportunity to be heard.

(e) Quorum. A majority of the members of the Board constitutes a quorum. A majority vote is required to carry an official action.

(f) Minutes. A record of the Board's official actions.

(g) The Board shall be responsible for the review of all award recommendations for suggestions adopted by multiple State agencies, and for adopted suggestions which were submitted prior to January 1, 1993.

(h) The Board shall review and recommend to the Director of DPA all employee suggestions which justify total cash awards greater than $5,000. Upon the approval of the Director of DPA, an award of $5,000 shall be made to the suggester and the remaining portion shall be submitted for subsequent approval by concurrence of the Legislature.

(i) The Board shall be responsible for the review of suggestions referred to DPA by the State agency or suggester when a disagreement exists which cannot be resolved by the agency director or designee or by the Merit Award Program. In these cases, the Board shall review and recommend to the Director of DPA its resolution to the disagreement, and the decision by the Director of DPA will be considered final.

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19823, Government Code. Reference: Section 19823, Government Code.

HISTORY

1. New section filed 2–9–84 (corrected copy refiled 2–27–84); effective thirtieth day thereafter (Register 84, No. 8).
2. Editorial correction of HISTORY NOTES printed in error in Register 84, Nos. 8 and 12 (Register 84, No. 15).
3. Amendment of subsection (c) filed 3–24–86; effective thirtieth day thereafter (Register 86, No. 13).
4. Amendment filed 12–2–92; operative 1–2–93 (Register 94, No. 8).
5. Amendment filed 9–19–96; operative 10–19–96 (Register 96, No. 38).

§ 599.657. Merit Award Program Administration.

(a) The director or designee shall be authorized to approve or deny suggestions, special acts, special service, or superior accomplishments in accordance with these rules, which may impact the administration of the respective agency, provided the total award is not greater than $5,000. The director shall designate an employee to be responsible for the Merit Award Program activities of the State agency. This employee's name and title shall be reported to Merit Award Program staff.

(b) The director or designee may authorize approval of awards, provided the total award is not greater than $5,000.

(c) The director or designee may grant Certificates of Commendation, Medals, gifts, or other tokens of esteem, in accordance with these rules, without reference to DPA.

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19823, Government Code. Reference: Section 19823, Government Code.

HISTORY

1. New section filed 2–9–84 (corrected copy refiled 2–27–84); effective thirtieth day thereafter (Register 84, No. 8).
2. Editorial correction of HISTORY NOTES printed in error in Register 84, Nos. 8 and 12 (Register 84, No. 15).
3. Amendment filed 3–24–86; effective thirtieth day thereafter (Register 86, No. 13).
4. Amendment of section heading and text filed 12–2–92; operative 1–2–93 (Register 94, No. 8).
5. Amendment of subsections (a) and (c) filed 9–19–96; operative 10–19–96 (Register 96, No. 38).

§ 599.658. Eligibility for Participation.

(a) Every active and/or retired State employee is eligible to participate in the employee suggestion program, except officers and employees of the Universities of California and California State Universities.

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19823, Government Code. Reference: Section 19823, Government Code.

HISTORY

1. New section filed 2–9–84 (corrected copy refiled 2–27–84); effective thirtieth day thereafter (Register 84, No. 8).
2. Editorial correction of HISTORY NOTES printed in error in Register 84, Nos. 8 and 12 (Register 84, No. 15).
3. Amendment filed 9–19–96; operative 10–19–96 (Register 96, No. 38).

§ 599.659. Eligibility of a Suggestion.

(a) A suggestion which describes a specific problem, offers a workable solution, and is intended to be of benefit to the operations or safety of the State of California will be accepted for evaluation except for those suggestions which:

(1) Are currently being evaluated or have been evaluated within the last year through the employee suggestion program.

(2) Recommend new or increased taxes or fees.

(3) Recommend additional revenues at the expense of a segment of taxpayers and which can be classified as unjust or inequitable.

(4) Recommend a change in the pay or classification of a position or a class, or the establishment of new positions. This area is held to be the continuing responsibility of the agency and DPA.

(5) Recommend a "study," "survey," or "review" with the course of action to be taken in accordance with the findings.

(6) Involve a personal grievance.

(7) Involve terms and conditions of employment, which are subject to the collective bargaining process under the Ralph C. Dills Act.

(8) Recommend corrections in spelling, punctuation, grammar, or mathematical calculations. These changes should be communicated through established departmental channels.

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19823, Government Code. Reference: Section 19823, Government Code.

HISTORY

1. New section filed 2–9–84 (corrected copy refiled 2–27–84); effective thirtieth day thereafter (Register 84, No. 8).
2. Editorial correction of HISTORY NOTES printed in error in Register 84, Nos. 8 and 12 (Register 84, No. 15).
3. Amendment filed 3–24–86; effective thirtieth day thereafter (Register 86, No. 13).
4. Amendment of subsection (a)(7) filed 11–13–90; operative 12–13–90 (Register 90, No. 52).
5. Amendment of subsection (a)(4) and new subsection (a)(8) filed 12–2–92; operative 1–2–93 (Register 94, No. 8).
6. Amendment of subsections (a), (a)(2) and (a)(4) filed 9–19–96; operative 10–19–96 (Register 96, No. 38).

§ 599.660. Eligibility for Awards.

(a) Employee eligibility for awards will be measured in terms of assigned or expected job responsibilities. Eligibility shall be initially determined by the State agency that employed the suggester at the time the suggestion was submitted. An employee is not eligible for an award for a suggestion pertaining to a subject assigned to him/her for research, development or solution for which he/she has a clear and specific responsibility to offer as part of his/her normal job requirements. In determining normal job responsibilities, the State agency and/or Board will consider the job description/duty statement, performance requirements, supervisors' interpretations, authority to place suggestions into effect, expectations of the classification job specification, and other factors, such as customary practice, which may have a bearing on the duties expected of the suggester.

(b) Employees appointed to Career Executive Assignments (CEA), or Exempt classifications with a collective bargaining designation of "managerial", are not considered eligible to receive cash awards under the employee suggestion program. These classifications are distinguished from

others in the State civil service in that the duties and responsibilities are of a high administrative and top managerial nature. It is an inherent part of the job expectations and duties of employees appointed to such classifications to find efficient ways to improve the operation of State Government.

(c) In cases where a dispute may arise between the adopting and/or employing State agency and the suggester as to his/her eligibility to receive an award, the suggestion shall be forwarded to the Merit Award Program for review. Facts and opinions on the eligibility of the suggester may be solicited from the employing agency for review by the Board in formulating an official recommendation to the Director of DPA.

(d) To be eligible for an award, an employee must propose a change that has a direct effect on the reduction or elimination of State expenditure or improvement in the operation or safety of State Government. An award will not be granted in instances where a suggestion has been adopted as a result of an action which is not occasioned by nor resulting from the suggestion.

(e) As a condition of eligibility for an award, each suggester shall execute the following agreement:

"The use by the State of California of my suggestion shall not form the basis of a further claim of any nature upon the State of California by me, my heirs or assigns."

(f) To be considered eligible for an award, suggesters whose proposals are implemented prior to the submission of an Employee Suggestion form (Std 645 Rev 12–95) must submit a form with appropriate verification within six months following the date the suggestion was first put into effect.

NOTE: Authority cited: Sections 19815(d), 19816 and 19823, Government Code. Reference: Section 19823, Government Code.

HISTORY

1. New section filed 2–9–84 (corrected copy refiled 2–27–84); effective thirtieth day thereafter (Register 84, No. 8).
2. Editorial correction of HISTORY NOTES printed in error in Register 84, Nos. 8 and 12 (Register 84, No. 15).
3. Amendment filed 12–2–92; operative 1–2–93 (Register 94, No. 8).
4. Amendment filed 9–19–96; operative 10–19–96 (Register 96, No. 38).

§ 599.661. Employee Suggestion Procedures.

(a) Suggestions must be submitted in writing to the State agency responsible for making the changes recommended in the suggestion(s). Suggesters will be responsible for submitting the suggestion to the appropriate agency for review when the idea affects only one agency, or to DPA when multiple agency review is required. All suggestions must be submitted on an Employee Suggestion form (STD 645 Rev 9–89).

(b) Suggestions must be signed but the suggester's name may, as designated by the employee on the Employee Suggestion form (STD 645 Rev 9–89), remain confidential during the evaluation process. The identity will be revealed when the idea has been adopted, as the suggester's job responsibility must be assessed in relation to the suggestion before an award can be made.

(c) Suggestions which do not meet eligibility requirements shall be disallowed. If there is controversy regarding eligibility of a suggestion, it shall be referred to the director or designee for review of the decision which disallowed the suggestion.

(d) The State agency's Merit Award Administrator or Merit Award Program staff if the suggestion affects multiple agencies, shall receive, record and acknowledge receipt of suggestions in writing to the suggester within 10 working days of receiving the suggestion, and shall notify suggesters of any undue delay in the consideration of their suggestions. Each new suggestion will be assigned a number for reference during the evaluation process, and such number shall be included in the acknowledgement to the suggester.

(e) Suggestions shall be referred for evaluation within 10 working days of receipt of the suggestion. The suggester shall be provided with a status report on the progress of the evaluation at least once every quarter until a final decision is made.

(f) The findings and recommendations of the evaluating agency shall indicate whether a suggestion has been adopted; the date on which it was placed in effect, or estimated date of implementation; any actual or estimated reduction, elimination, or avoidance of expenditures or improvement in operations made possible by the suggestion; the availability of funds for payment of proposed awards of $1,000 and over; or the reasons, in detail, why the suggestion could not be adopted.

(g) The Merit Award Administrator, or DPA if the suggestion affects multiple agencies, shall review the evaluating agency's findings and recommendations and may obtain additional information or take such other action as needed for prompt, thorough, and impartial consideration of each suggestion.

(h) For each suggestion eligible for an award, the Merit Award Administrator, after taking into consideration staff recommendations, and the objectives of the Merit Award Program, shall formulate an official recommendation to the agency's director describing describing the merits of the suggestion, and the amount of the recommended award, in accordance with these rules. DPA shall review suggestions evaluated and adopted by multiple agencies, or awards exceeding $5,000, and shall formulate an official cash award recommendation to the Merit Award Board.

(i) The State agency director of the employing agency shall, upon approval of a suggestion, authorize a cash award, in accordance with these rules.

(j) DPA shall, upon approval of a suggestion by the Board, authorize a cash award, in accordance with these rules.

(k) The Merit Award Administrator, or DPA if the suggestion affects multiple agencies, shall notify the suggester of the action taken as soon as a suggestion has received final consideration.

(*l*) Final reports on all suggestions shall be processed as follows:

(1) Reports of nonadoption shall be sent directly to the suggester by the evaluating agency, or DPA if the suggestion affects multiple agencies.

(2) Reports of adoption and recommended award shall be sent directly to the suggester by the evaluating agency, or DPA if the suggestion affects multiple agencies. If the suggestion is adopted by an agency other than the one where the suggester is employed, a copy of the report shall also be transmitted to the employing agency's Merit Award Administrator for processing the recommended award, in accordance with these rules. The adopting agency(s) shall reimburse the employing agency for the amount of the award if the award is $55 or over.

(m) The Merit Award Administrator shall provide a report on the number of suggestions received, denied and/or adopted, including total amount of awards and savings, to the Merit Award Program staff on a yearly basis.

(n) The Merit Award Program staff shall be responsible for conducting periodic audits of the Merit Award Program within each State agency to ensure that:

(1) eligibility requirements, in accordance with these rules, are being uniformly applied.

(2) cost analyses provide sufficient documentation in support of one–time or on–going savings.

(3) intangible suggestions are being awarded under the applicable intangible benefits scales for improved procedures or safety.

(4) cash awards granted for suggestions with tangible and/or intangible benefits are comparable with similar suggestions awarded by other departments.

The findings and/or recommendations resulting from an audit shall be reported to the director of the respective State agency.

(o) The Board may establish such additional standards for submission of suggestions as it deems proper.

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19823, Government Code. Reference: Section 19823, Government Code.

HISTORY

1. New section filed 2–9–84 (corrected copy refiled 2–27–84); effective thirtieth day thereafter (Register 84, No. 8).
2. Editorial correction of HISTORY NOTES printed in error in Register 84, Nos. 8 and 12 (Register 84, No. 15).
3. Amendment filed 12–2–92; operative 1–2–93 (Register 94, No. 8).
4. Amendment filed 9–19–96; operative 10–19–96 (Register 96, No. 38).

§ 599.662. Appeal and Reconsideration.

A suggester may request, in writing, that his/her suggestion be reconsidered for merit award purposes:

(a) By the State agency or DPA within one year following the date of the State agency's or DPA's decision, when an employee disagrees with the decision and provides additional or supplemental information with the request.

(b) By the State agency or DPA within three years following the date of the State agency's or DPA's decision not to adopt a suggestion that was subsequently accepted and put into effect.

(c) By the DPA Merit Award Program, within one year following the State agency's decision, when a disagreement exists and is unresolvable between the suggester and the employing State agency and/or the evaluating agency. The "employing State agency" refers to the agency that employed the suggester at the time the suggestion was submitted.

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19823, Government Code. Reference: Section 19823, Government Code.

HISTORY

1. New section filed 2–9–84; effective thirtieth day thereafter (Register 84, No. 8).
2. New section refiled 2–27–84 to correct inadvertent omission of text from 2–9–84 order; designated effective 3–10–84 (Register 84, No. 8).
3. Editorial correction of HISTORY NOTE No. 2 filed 3–9–84 (Register 84, No. 12).
4. Amendment of subsection (a) filed 3–24–86; effective thirtieth day thereafter (Register 86, No. 13).
5. Amendment filed 12–2–92; operative 1–2–93 (Register 94, No. 8).
6. Amendment filed 9–19–96; operative 10–19–96 (Register 96, No. 38).

§ 599.663. Recommendations of Awards for Special Acts, Special Services, or Superior Accomplishments.

(a) A recommendation for an award for these categories must originate with the management of the State agency where the employee or team of employees are employed. Each recommendation shall be approved by the head of the State agency.

(b) Each recommendation for an award for special acts, special services or superior accomplishments shall be made in accordance with procedures and standards established by DPA in the State Administrative Manual, Sections 4760 through 4782.9.

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19823, Government Code. Reference: Section 19823, Government Code.

HISTORY

1. New section filed 2–9–84 (corrected copy refiled 2–27–84); effective thirtieth day thereafter (Register 84, No. 8).
2. Editorial correction of HISTORY NOTES printed in error in Register 84, Nos. 8 and 12 (Register 84, No. 15).
3. Amendment filed 12–2–92; operative 1–2–93 (Register 94, No. 8).
4. Amendment of subsection (a) filed 9–19–96; operative 10–19–96 (Register 96, No. 38).

§ 599.664. Cash Awards.

The following criteria shall apply to cash awards:

(a) Cash awards for adopted suggestions shall not be less than $50, or more than $50,000. Where the provisions of this rule would otherwise result in an award of greater than $50,000, the award shall be $50,000. Awards of more than $5,000 will be granted only upon approval by concurrent resolution of the Legislature.

(b) Cash awards will be calculated in the following manner:

(1) Where annual net savings or increased revenues cannot be determined, or are calculated as less than $500, a cash award may be recommended in accordance with the Improved Procedures or Improved Safety Scales.

(2) Where annual net savings or increased revenues are calculated as at least $500, but not more than $1,000, the recommended cash award shall be $100.

(3) Where annual net savings or increased revenues exceed $1,000, the recommended cash award shall be 20 percent of the net savings or increased earnings realized by the State agency during the first year following adoption of the suggestion, subject to subsection (c) below.

(c) Awards computed under subsection (b)(3) will be calculated at 5 percent of the net savings or increased earnings realized during the first year following adoption of the suggestion where the proposal required substantial refinement for implementation, and/or where an alternative solution was adopted as a result of the proposal, and/or where the proposal results in one–time savings or benefits.

(d) If savings or benefits during the first year following adoption do not equitably measure the merits of a suggestion, savings or benefits over a different period of time may be used as an award standard.

(e) The decision of DPA as to the amount of awards shall be final except for those awards requiring approval of the Legislature.

(f) If more than one State agency benefits from the adoption of an employee suggestion, the award shall be prorated between the State agencies receiving the benefit. DPA shall be responsible for prorating the award amount. The agency that currently employs the suggester will be responsible for requesting reimbursement from the other State agencies. In cases where an Improved Safety or Improved Procedure award is recommended, DPA shall arrive at one award amount based upon the evaluating agencies' recommendations. If a dispute arises between agencies regarding prorating or reimbursement, the Board shall act as mediator.

(g) Awards to employees for adopted suggestions shall be paid from the funds or appropriations available to the State agency(s) benefiting from the adopted suggestion unless payment from some other source is authorized by the Department of Finance.

(h) Except for awards for Improved Safety, a cash award of $1,000 or more shall require the respective State agency(s) to identify such savings (reduced expenditures or increased revenues) and submit to DPA an Identification and Recovery of Savings form (DPA–134 New 8/87) reflecting how the recovery will be accomplished. A copy of this form shall be transmitted to the Department of Finance by the state agency for appropriate action. For awards requiring Board approval, the Identification and Recovery of Savings form shall be forwarded to DPA.

(i) Awards for a Special Act, Special Service or Superior Accomplishment shall be:

(1) Special Act and Special Service awards are honorary and consist of a certificate, a citation, medal and lapel pin. The certificate, medal and lapel pin are available from the Merit Award Program. The Merit Award Program shall be reimbursed for the cost of the medal and lapel pin. Citations shall be the responsibility of the awarding agency.

(2) Superior Accomplishment awards consist of an engraved walnut plaque or a certificate, and/or a cash or gift award. This award includes two levels of cash awards: Gold/from $50 to $500 per individual or team, and Silver/from $25 to $250 per individual or team. Departments have the option of providing cash or equivalent gift awards.

(3) Superior Accomplishment awards for sustained superior performance over a period of twenty–four months consist of a framed certificate and/or a gift or cash award of up to $250 per individual or team. Departments have the option of providing cash or equivalent gift awards.

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19823, Government Code. Reference: Section 19823, Government Code.

HISTORY

1. New section filed 2–9–84 (corrected copy refiled 2–27–84); effective thirtieth day thereafter (Register 84, No. 8).
2. Editorial correction of HISTORY NOTES printed in error in Register 84, Nos. 8 and 12 (Register 84, No. 15).
3. Amendment of subsections (a) and (b) and repealer of subsection (j) filed 11–13–90; operative 12–13–90 (Register 90, No. 52).
4. Amendment filed 12–2–92; operative 1–2–93 (Register 94, No. 8).
5. Amendment filed 9–19–96; operative 10–19–96 (Register 96, No. 38).

6. Amendment of subsection (b)(3) filed 5–14–2007; operative 6–13–2007 (Register 2007, No. 20).

Article 5. Compensation

§ 599.665. Attendance Records.

Each appointing power shall keep complete and accurate time and attendance records for each employee and officer employed within the agency over which it has jurisdiction. Such records shall be kept in the form and manner prescribed by the Department of Finance in connection with its powers to devise, install and supervise a modern and complete accounting system for state agencies.

NOTE: Authority cited: Sections 19815.4(d) and 19816, Government Code. Reference: Section 19849, Government Code.

HISTORY

1. New Article 5 (Sections 599.665–599.691) filed 9–6–83; effective thirtieth day thereafter (Register 83, No. 37).

CROSS REFERENCE: See Title 2, Division 1, Chapter 1, Subchapter 1, Sections 9–112.

§ 599.666. The Pay Plan.

The pay plan for the state civil service consists of the salary ranges and steps established by the Department of Personnel Administration and the rules contained in this article.

As used in this article, terms are defined as follows:

(a) "salary range" is the minimum and maximum rate currently authorized for the class;

(b) "step" is the difference between two salary rates one full salary range number apart;

(c) "rate" is any one of the salary rates in the resolution by the Department of Personnel Administration which establishes the salary ranges and steps of the Pay Plan;

(d) "range differential" is the difference established by resolution of the Department of Personnel Administration between two consecutive salary ranges of the Pay Plan;

(e) "substantially the same salary range" is a salary range with the maximum salary rate the same as or less than two steps higher or lower than the maximum salary rate of another salary range;

(f) "higher salary range" is a salary range with the maximum salary rate at least two steps higher than the maximum salary rate of another salary range;

(g) "lower salary range" is a salary range with the maximum salary rate at least two steps lower than the maximum salary rate of another salary range. Any rate falling within the salary range for a class may be used to accomplish appropriate step differentials in movements between classes and salary ranges.

NOTE: Authority cited: Sections 19815.4(d) and 19816, Government Code. Reference: Section 19829, Government Code.

HISTORY

1. Amendment of subsection (g) filed 11–17–87; operative 12–17–87 (Register 87, No. 48).

§ 599.666.1. The Pay Plan—Nonrepresented Employees.

The pay plan for State civil service employees designated supervisory under Section 3522.1 or excluded from the definition of State employee under Section 3513 (c) or managerial under Section 3513 (e) of the Ralph C. Dills Act consists of the salary ranges and rates established by the Department of Personnel Administration and the rules contained in this article. As used in this article, terms are defined as follows:

(a) "salary range" is the minimum and maximum rate currently authorized for the class;

(b) "step" for employees compensated on a monthly basis is a 5% differential above or below a salary rate rounded to the nearest dollar and for employees compensated on a daily or hourly basis is a 5% differential above or below a rate rounded to the nearest dollar and cents amount.

(c) "rate" for employees compensated on a monthly basis is any one of the full dollar amounts found within the salary range and for employees compensated on a daily or hourly basis any one of the dollar and cents amounts found within the salary range.

(d) "range differential" is the difference between the maximum rate of two salary ranges of the Pay Plan.

(e) "substantially the same salary range" is a salary range with the maximum salary rate less than 2 steps higher or lower than the maximum salary rate of another salary range.

(f) "higher salary range" is a salary range with the maximum salary range at least 2 steps higher than the maximum salary rate of another salary range.

(g) "lower salary range" is a salary range with the maximum salary rate at least 2 steps lower than the maximum salary rate of another salary range.

Under paragraph (b) one step higher is calculated by multiplying the rate by 1.05. One step lower is calculated by dividing the rate by 1.05 (e.g., $2,300 x 1.05 = $2,415, one step higher; $2,415 ÷ 1.05 = $2,300, one step lower).

Unless otherwise provided by the State Personnel Board, the lowest salary range currently authorized for the class is used to make salary comparisons between classes. Any rate falling within the salary range for a class may be used to accomplish appropriate step differentials in movements between classes and salary ranges.

NOTE: Authority cited: Sections 19815.4(d), 19816 and 3517.8, Government Code. Reference: Section 19829, Government Code.

HISTORY

1. New section filed by the Department of Personnel Administration with the Secretary of State on 2–22–89; operative 3–2–89. Submitted to OAL for printing only pursuant to Government Code Section 11343.8 (Register 89, No. 18).

§ 599.667. The 10–12 Pay Plan.

A "10–month employee" as used in this section means a person who is employed: full time in a civil service position in the Special Education Program Support Unit of the Department of Education; or full time in a position at the California Maritime Academy; or full time in a civil service position requiring teacher certification qualifications and performance of teaching duties for ten consecutive pay periods as designated by the appointing power on State workdays as defined in State Board of Control Regulations or on days in lieu thereof, and who elects with approval of the appointing power to be employed and paid on an annual salary basis under the provisions of this section. "Annual salary" as used in this section means the sum of the monthly salary rates which the employee could have earned during the 10 designated pay periods had the employee not elected to be employed and paid under the provisions of this section.

(a) Pay for the Entire 10 Months. A 10–month employee who completes all the service required for the designated 10–month period beginning on the first day of the first State pay period of the designated 10–month period, shall for such service be paid the annual salary in 12 installments payable on State pay days of each of the subsequent 12 pay periods, covering the period of one year. The first installment shall be paid on the first State pay day following the effective date of appointment, reinstatement or election for the year. Authorized time worked in excess of the employee's regularly scheduled workweek shall be compensated for in accordance with the provisions of Sections 599.700–599.711 at the monthly rate which the employee could have earned had the employee not elected to be employed and paid under the provisions of this section. If such employee serves in excess of 10 designated monthly pay periods during any 12–month period, such excess service shall be under separate appointment and shall be compensated at the monthly rate appropriate for that appointment and position.

(b) Interim Adjustment in Pay Due to Noncompensable Absence. If, because a 10–month employee reports for duty after the first day of the first pay period of the designated 10–month period or because the employee has had noncompensable absence, it is necessary to reduce the salary payment for any State pay period, the interim reduction for that period shall be at the rate of 1/210 of the annual salary of the employee for each workday the employee was in a nonpay status, except that if such

computation in any one pay period would result in zero or minus pay, the employee shall be paid at the rate of 1/210 of such annual salary for each day actually worked during such State pay period.

(c) Settlements Payments. A 10–month employee who serves less than the designated 10–month period, or whose pay has been adjusted because of reporting for duty after the first day of the first pay period of the designated 10–month period or because of a noncompensable absence, or who has had a change in rate of pay or in time base shall, on the State pay day on which the employee is to receive the final installment of the annual salary, or at the time of separation or transfer from the 10–month position, receive a final settlement computed in accordance with the following formula:

(First step)

$$\text{Total salary earned} = \frac{\text{total days worked x annual salary}}{\text{number of workdays in 10–month period}}$$

(Second step)

Amount of settlement payment = total salary earned – salary received for current 10–month period.

(d) Report to Controller. The final settlement payment shall be computed by appointing power and a copy of such computation furnished to the Controller's Disbursing Office.

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19826, Government Code. Reference: Section 19829, Government Code.

§ 599.668. Correction of Salary Rate.

The effective date of correction of any salary rate to which an employee is entitled under Sections 599.676, 599.679, 599.681, 599.683, 599.685, 599.688, or 599.689 shall be as of the time earned except that it shall not be prior to one year from the date the corrective action was initiated.

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19826, Government Code. Reference: Section 19829, Government Code.

§ 599.669. Full–Time and Less Than Full–Time Rates.

The salary range for each class represents the rate of pay for full–time monthly employment unless the pay plan specifically states otherwise. Monthly employment shall consist of a pay period prescribed by the Department of Finance and containing either 21 or 22 work days. Where there is part–time or irregular employment in a position for which a monthly salary range is established, the employee shall normally be paid the proportionate part of the monthly rate or on an hourly basis for the time actually employed:

(a) Where the part–time employment is regularly scheduled and is a fixed proportion of the established work week, the employee shall be paid that proportionate part of the monthly rate (e.g. one–half time, one–quarter time).

(b) Where employment is intermittent and irregular, the monthly rate shall be converted to an hourly rate in accordance with these rules and an employee shall be paid at such rate.

(c) Where the employee works on a part–time, irregular, and indeterminate basis, and it is not practicable to ascertain the number of working hours to be devoted to the service of the state, the local compensation for such service shall be fixed by the Director of the Department of Personnel Administration after considering the recommendation of the appointing power. Such recommendation shall include an estimate of the average

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amount of time to be devoted by the employee to the performance of duties and an appraisal of the value of such services.

(d) When an employee in a professional class works for the state on a part-time or intermittent basis incidental to the employee's private practice, and such practice has overhead expenses that continue regardless of the employment with the state, the Director of the Department of Personnel Administration may permit compensation for time worked in accordance with a schedule of hourly compensation established by the Department of Personnel Administration that may exceed the hourly equivalent of the monthly salary.

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19826, Government Code. Reference: Section 19829, Government Code.

§ 599.670. Conversion of Rates.

Monthly or hourly rates of pay may be converted from one to the other when the Director of the Department of Personnel Administration considers it advisable. In such conversion a 40-hour week is equivalent to a 173.33-hour month; a 44-hour week is equivalent to a 191-hour month; a 48-hour week is equivalent to a 208-hour month. Rates resulting from such conversions shall be rounded to the nearest cent.

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19826, Government Code. Reference: Sections 19829 and 19851, Government Code.

§ 599.671. Entire Compensation.

Unless otherwise indicated in the pay plan, the rates of pay set forth represent the total compensation in every form except for overtime compensation. Each employee shall be paid at one of the established rates in the salary range for the class, unless the Department of Personnel Administration or the Director of the Department of Personnel Administration in accordance with the provisions of Section 19837 authorizes a rate above the maximum of the class.

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19826, Government Code. Reference: Section 19837, Government Code.

§ 599.672. Duplicate Compensation Prohibited.

When work is performed during an employee's regular working hours for which the employee is paid from a source other than the regular compensation source, the employee's regular compensation shall not include any payment for the time spent in the other work. No deductions shall be made from the salary of an employee while on jury duty if the fee for jury duty is remitted to the State. If the fee for jury duty is not remitted to the state, the employee shall be paid only for the time actually worked in the state position.

NOTE: Authority cited: Sections 19815.4(d) and 19816, Government Code. Reference: Section 19991.3, Government Code.

§ 599.672.1. Duplicate Compensation Prohibited—Excluded Employees.

For the purposes of this section an excluded employee is defined in Section 3527(b) of the Government Code.

(a) In addition to Section 599.672, when night jury service is required of an excluded employee, the excluded employee shall be allowed time off without loss of compensation for such portion of the required time that coincides with the excluded employee's normal work schedule. This includes any necessary travel time.

NOTE: Authority cited: Sections 3539.5, 19815.4(d) and 19816, Government Code. Reference: Sections 19826 and 19991.3, Government Code.

HISTORY

1. New section filed by Department of Personnel Administration with Secretary of State on 12-30-87; operative 12-30-87. Submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 88, No. 7).
2. Change without regulatory effect amending section heading, section and NOTE filed 6-29-92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 27).

§ 599.673. Entrance Rate.

The minimum limit in the salary range for each class is the entrance rate except as otherwise provided in the act or in these rules. When there is more than one salary range for a class, the Department of Personnel Administration shall provide criteria to determine:

(a) The range to which a position shall be assigned or the range which an employee shall receive,

(b) Which step in the range shall be received upon movement between ranges in the class, and

(c) The conditions under which movement may be made from one range to another.

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19826, Government Code. Reference: Section 19829, Government Code.

§ 599.674. Rate on Movement Between Classes with Substantially the Same Salary Range.

Such movement may be in the same or to another department and by transfer, appointment from an employment list, temporary appointment, or reinstatement other than mandatory and, in addition, under Paragraph (c), by either voluntary or disciplinary demotion. The provisions of this section do not apply to demotion in lieu of layoff or demotion under Section 19253.5 after medical examination.

Except as provided in Section 59.690 for trade rate classes the salary rate payable to a permanent or probationary employee upon movement without a break in service between classes with substantially the same salary range shall be established as follows:

(a) When moving to a class with the same salary range or a range not to exceed one step higher at the maximum, the employee may, as recommended by the appointing power, receive any rate in the salary range not to exceed the total of the range differential between the maximum salary rates.

(b) When moving, other than from a promotional employment list, to a class with a salary range more than one step higher at the maximum, the employee may, as recommended by the appointing power, receive any rate in the salary range not to exceed one step above the rate last received. When moving to this class by an appointment from a promotional employment list, the employee shall be entitled to the rate in the salary range one step above the rate last received.

(c) In all other instances the employee may, as recommended by the appointing power, receive any rate in the salary range not above that last received.

If the employee receives an increase, a new salary adjustment anniversary date is established subject to the provisions of Sections 599.683 and 599.685; otherwise the salary adjustment anniversary date is retained.

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19826, Government Code. Reference: Section 19253.5 and 19829, Government Code.

§ 599.675. Rate on Movement to Class with Lower Salary Range.

Except as provided in Section 599.690 for trade rate classes, a permanent or probationary employee who without a break in service moves to a class with a lower salary range may receive, if recommended by the appointing power, and approved by the Director of the Department of Personnel Administration, a rate above the minimum provided it does not exceed the rate the employee last received.

Such movement may be in the same or to another department and may be by appointment from an employment list, temporary appointment, voluntary demotion, disciplinary demotion, or reinstatement under Government Code Section 19140. The provisions of this section do not apply to demotion in lieu of layoff or demotion under Section 19253.5 after medical examination.

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19826, Government Code. Reference: Sections 19253.5 and 19829, Government Code.

§ 599.676. Rate on Movement to Class with Higher Salary Range.

Such movement may be in the same or to another department and by appointment from an employment list, by temporary appointment, or by reinstatement.

Except as provided in Section 599.690 for trade rate classes, a permanent or probationary employee who, without a break in service, moves to another class with a higher salary range shall be entitled to the rate in the salary range one step above the rate last received. If the movement

is between two classes, one of which has an established rate of compensation other than a monthly rate, and the increase resulting from such adjustment amounts to less than one step in the salary range for the higher class, the employee shall be entitled to the next higher rate in the salary range which provides a one–step increase.

A new salary adjustment anniversary date is established subject to the provisions of Sections 599.683 and 599.685.

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19826, Government Code. Reference: Section 19829, Government Code.

§ 599.676.1. Rate on Movement to a Class with a Higher Salary Range—Managerial Employees.

The provisions of this section apply only to State civil service employees designated managerial under Section 3513(e) of the Ralph C. Dills Act.

A permanent or probationary employee who, without a break in service, moves to another class with a higher salary range shall be entitled to the rate in the salary range one step above the rate last received. When such movement requires a change in geographic location the employee may, as recommended by the appointing power, receive up to two steps above the rate last received provided the rate does not exceed the maximum rate of the higher salary range.

Such movement may be in the same or to another department and by appointment from an employment list, by temporary appointment, or by reinstatement. A new salary anniversary date is established subject to the provisions of Sections 599.683 and 599.685.

NOTE: Authority cited: Sections 3517.8, 19815.4(d) and 19816, Government Code. Reference: Section 19829, Government Code.

HISTORY

1. New section filed by the Department of Personnel Administration with the Secretary of State on 8–31–89; operative 8–31–89. Submitted to OAL for printing only pursuant to Government Code Section 11343.8 (Register 89, No. 40).

§ 599.677. Rate on Reappointment or Reinstatement After Permanent Separation.

Re–entry into state service may be in the same or to another department and by appointment from an employment list, by temporary appointment, or reinstatement.

Upon the determination of the appointing power that it is in the best interest of the state, a former employee who re–enters the service within the period of reinstatement or reemployment list eligibility or within three years after other permanent separations may, if not entitled thereto under Sections 19141, 19253.5, 19997.9, 19997.12 and 19775.6 of the act, receive a salary above the minimum limit provided that if the reinstatement or appointment is:

(a) To the same class, the salary rate shall not exceed the rate in the salary range received at the time of separation adjusted for the salary range changes for the class since separation.

(b) To a different class with substantially the same salary range as that of the class from which separated, the salary rate shall not exceed the rate the employee could receive if reinstated or reappointed to the same class from which separated.

(c) To a different class with a lower salary range than the class from which separated, the employee may receive any rate in the salary range not to exceed the salary rate last received in the class from which separated, adjusted for the salary range changes of the latter class since the separation.

The rate in the salary range an employee receives on reappointment or reinstatement should be related to the employee's value to the state.

The Director of the Department of Personnel Administration may establish guides to be used in the application of this rule.

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19826, Government Code. Reference: Sections 19141, 19253.5, 19775.6, 19829, 19836, 19997.9 and 19997.12, Government Code.

§ 599.678. Rate on Reappointment or Reinstatement After Temporary Separation.

Re–entry into state service may be in the same or another department and by appointment from a reemployment employment list or reinstatement.

A person who is reappointed or reinstated within the period of reinstatement or reemployment list eligibility after temporary separation shall, if not entitled to a higher rate under Sections 19141, 19253.5, 19997.9, 19997.12 and 19775.6 of the act, receive a salary rate as follows:

(a) To the same class, the salary rate received at the time of separation adjusted for the salary range changes for the class since the separation.

(b) To another class with substantially the same salary range as the class from which separated, the salary rate may be either the same salary rate the employee would receive if appointed to such former class or the rate in the salary range which does not exceed the total number of range differentials above or below the rate the employee would receive if appointed to such former class.

(c) To a different class which has a lower salary range than the class from which separated, a salary rate not to exceed the salary rate last received in the class from which separated, adjusted for the salary range changes of the latter class since separation.

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19826, Government Code. Reference: Sections 19141, 19253.5, 19829, 19836, 19775.6, 19997.9 and 19997.12, Government Code.

§ 599.679. Retention of Salary Above the Maximum upon Movement Between Classes.

Upon movement without a break in service to a class with a higher salary range, an employee receiving a salary above the maximum shall be entitled to a promotional adjustment as provided by these regulations unless such rate exceeds the maximum of the new class. In this event, the employee shall be entitled to the same rate as was received in the class the employee left until such time as the maximum of the new class equals or exceeds this rate.

Upon movement without a break in service to a class with substantially the same salary range, an employee shall be entitled to the same rate received in the class left until such time as the maximum of the new class equals or exceeds this rate. Such movement may be in the same or to another department and by transfer, appointment from an employment list, temporary appointment, voluntary demotion, or reinstatement under Government Code Section 19140.

Upon movement without a break in service to a class with a lower salary range, an employee shall be entitled to the same dollar differential above the step to which entitled in the lower class as received in the higher class, until such time as the maximum of the new class equals or exceeds this rate. Such movement may be in the same or to another department and may be by appointment from an employment list, temporary appointment, voluntary demotion, disciplinary demotion, or reinstatement under Government Code Section 19140.

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19826, Government Code. Reference: Sections 19140 and 19837, Government Code.

§ 599.680. Termination of a Salary Above the Maximum.

Authorization to compensate an employee at a rate above the maximum shall be terminated when:

(a) An employee leaves the state service by resignation or separation for cause;

(b) The employee refuses a bona fide offer of permanent employment in a class in the same line of work two or more steps higher at the maximum or is unavailable for such employment, unless the Director of the Department of Personnel Administration finds the refusal to accept employment was reasonable under the circumstances.

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19826, Government Code. Reference: Section 19837, Government Code.

HISTORY

1. Change without regulatory effect amending subsection (b) filed 6–29–92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 27).

§ 599.681. Movement Between Alternate Ranges.

Unless otherwise authorized by the Director of the Department of Personnel Admnistration when an employee qualifies under established criteria and moves from one alternate range to another alternate range of a class, the employee shall receive an increase or a decrease equivalent to the total of the range differential between the maximum salary rates of the alternate ranges and shall retain the salary adjustment anniversary date.

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19826, Government Code. Reference: Sections 19826 and 19836, Government Code.

HISTORY

1. Editorial correction of printing error (Register 89, No. 11).

§ 599.682. Qualifying Service for Merit and Special In–Grade Salary Adjustment.

Except as provided in Section 599.687 one month of qualifying service for merit and special in–grade salary adjustments shall be counted for each monthly pay period which meets the conditions of Section 599.608 and has been:

(a) In the state civil service or in an exempt appointment or office as provided in Government Code Section 19141; and

(b) In the same class or in another class with substantially the same or higher salary range; and

(c) Under any of the following types of appointments:

(1) A permanent appointment.

(2) A Career Executive Assignment appointment.

(3) A temporary, emergency, or limited–term appointment preceding a mandatory reinstatement.

(4) At the discretion of the appointing authority, credit may also be given for: a temporary appointment in a seasonal class; or, a temporary or special limited–term appointment when filling a permanent position; or, a temporary, emergency or limited–term appointment not covered by (3) above when followed by a permanent appointment without a break in continuity of service.

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19826, Government Code. Reference: Sections 19141, 19832 and 19834, Government Code.

§ 599.683. Merit Salary Adjustment.

If the appointing authority certifies in the manner prescribed by the Director of the Department of Personnel Administration that the employee has met the standards of efficiency required for the position, the employee who is not paid at the maximum step of the salary range shall receive a merit salary adjustment equivalent to one step in the salary range provided that rate does not exceed the maximum salary rate effective on the first of the monthly pay period next following completion of:

(a) Twelve months of qualifying service after:

(1) appointment; or

(2) last merit salary adjustment; or

(3) last special in–grade salary adjustment; or

(4) movement between classes which resulted in a salary increase of one or more steps; or

(b) The number of months of qualifying service as provided by Department of Personnel Administration after movement between classes which resulted in a salary increase of less than one step. The Department of Personnel Administration shall provide that the number of months of qualifying service be proportionately reduced from 12 to the number of months that will permit the employee to receive approximately the same annual salary the employee would have received with a one–step increase.

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19826, Government Code. Reference: Sections 19832 and 19834, Government Code.

HISTORY

1. Editorial correction of opening sentence (Register 95, No. 37).

§ 599.684. Appeal from Merit Salary Adjustment Action.

When an employee has not met the standards of efficiency required for the position, the supervisor shall so certify in the manner prescribed by the Director of the Department of Personnel Administration or the Department of Personnel Administration and shall recommend that the merit salary adjustment not be granted. In such cases, the adjustment shall not normally be considered again in less than three months. An employee whose merit salary adjustment will not be recommended by the supervisor shall be informed of the reasons for such action before the certification is made by the supervisor. Within 10 days after the employee is informed that the merit salary adjustment will not be recommended, the employee may file a written request with the appointing power for reconsideration under the agency's Grievance Procedure. The employee may appeal to the Department of Personnel Administration within 15 days after having exhausted the departmental remedy as herein specified. In such appeal the determination of the appointing power to withhold a merit salary adjustment shall be sustained if supported by substantial evidence.

NOTE: Authority cited: Sections 19815.4(d) 19816 and 19826, Government Code. Reference: Sections 19832 and 19834, Government Code.

§ 599.685. Special In–Grade Salary Adjustment.

If the appointing authority certifies in the manner prescribed by the Director of the Department of Personnel Administration that the employee has met the standards of efficiency required for the position, the employee who is paid at the minimum step of the salary range in a class designated by the Department of Personnel Administration may receive a special in–grade salary adjustment to the second step of the salary range effective on the first of the monthly pay period next following completion of:

(a) six months of qualifying service after the appointment; or

(b) as otherwise may be provided by the Department of Personnel Administration. When movement between classes to the minimum step results in a salary increase of less than one step, the Department of Personnel Administration shall provide that the months of qualifying service be proportionately reduced from 6 to the number of months of qualifying service that will permit the employee to receive approximately the same annual salary the employee would have received upon appointment to the minimum step with a one–step increase.

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19826, Government Code. Reference: Sections 19834 and 19836, Government Code.

§ 599.686. Apprenticeship Increases.

In lieu of merit or special in–grade salary adjustments, apprenticeship increases shall be made to conform to the applicable standards established for the apprenticeship and approved by the Division of Apprenticeship Standards as authorized by the Shelley–Maloney Apprenticeship Labor Standards Act of 1939.

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19826, Government Code. Reference: Sections 19832, 19834 and 19836, Government Code.

§ 599.687. Effects of Breaks in State Service on Merit and Special In–Grade Salary Adjustments.

(a) Periods of absence from State service resulting from a permanent separation shall not be counted as qualifying service for merit salary adjustments and special in–grade salary adjustments.

(b) Any monthly pay period in which an employee has been absent as a result of a temporary separation of 11 working days or less, may be disqualified for merit salary adjustment or special in–grade salary adjustment if the supervisor certifies that the absence had affected the employee's ability to meet the standard of efficiency required for the position during the month.

(c) Periods of absence from State service for the following reasons shall be counted as qualifying service for merit and special in–grade salary adjustments:

(1) Military leave and periods of rehabilitation provided by Section 19780 of the Government Code.

(2) Time during which the employee is receiving temporary disability for injury or disease as provided in Section 19991.4 of the Government Code.

(3) Time during which the employee is receiving paid educational leave as provided in Section 19991.7 of the Government Code.

(d) Monthly pay periods of qualifying service which immediately precede and follow a return from a temporary separation from service shall be added together for merit and special in-grade salary adjustments. At the discretion of the appointing authority monthly pay periods of qualifying service which immediately precede and follow a return from a permanent separation from service may be added together for merit salary adjustment only.

NOTE: Authority cited: Sections 19815.4(d) and 19816, Government Code. Reference: Sections 18538.1, 19832, 19834 and 19996, Government Code.

HISTORY

1. Editorial correction of subsection (c) (Register 95, No. 37).

§ 599.688. Effect of Reallocation of Positions.

When the State Personnel Board divides a class into two or more separate classes, or consolidates two or more classes into a single class and grants status to incumbents, the Department of Personnel Administration shall determine salary eligibility based on the following:

(a) If the maximum salary rate of the new class to which an employee's position is allocated is the same or higher than the former class, the employee shall receive a salary increase equivalent to the total of the range differentials between the maximum salary rates as of the date of board action and retain the salary adjustment anniversary date.

(b) If the maximum salary rate of the new class to which the position is allocated is lower at the maximum, the employee shall continue to receive the same rate received in the former class but not to exceed the maximum rate of the salary range of the new class, unless the Department of Personnel Administration in accordance with the provisions of Section 19837 authorizes a rate above the maximum of the class. The employee shall retain the salary adjustment anniversary date.

When the State Personnel Board divides a class, an employee whose position is allocated to other than the highest of the resulting classes, and who is later assigned to a position in the higher of these classes, shall receive such salary as is provided in these rules governing movement between classes.

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19826, Government Code. Reference: Sections 18802, 19826 through 19837, Government Code.

§ 599.689. Effect of Salary Range Changes.

Unless otherwise provided by the Department of Personnel Administration, whenever the salary range for a class is changed, the salary of each incumbent in the class on the date the range change was made effective shall be adjusted by the total of the range differentials between the maximum salary rates and shall retain the same salary adjustment anniversary date. When range changes are made effective retroactively, incumbents in the class between the effective date of the range change and the date of Department of Personnel Administration action, inclusive, shall also receive the same adjustment.

When salary range changes become effective the same date as an employee's salary adjustment anniversary date, the employee shall first receive any salary adjustment to which entitled and then receive the range differential adjustment.

When salary range changes become effective the same date as an employee's promotion, the salary adjustments shall be made in such order that the employee shall gain the maximum benefit from the adjustments.

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19826, Government Code. Reference: Section 19826, Government Code.

§ 599.690. Trade Rate.

(a) For each class for which the salary range is designated by the Department of Personnel Administration as trade rate, the Director of the Department of Personnel Administration shall determine and promulgate, as often as conditions require, a trade rate range in which:

(1) The minimum salary limit shall be the prevailing rate paid in each locality for the type of work in question;

(2) There shall be one intermediate step which shall be either 5 cents an hour or 40 cents a day higher than the minimum salary limit; and

(3) The maximum salary limit shall be 10 cents an hour or 80 cents a day above the minimum salary limit.

(b) In establishing a trade rate range, the Director of the Department of Personnel Administration shall confer with and take into account the findings of state, county, municipal, and other official public bodies engaged in determining the prevailing rate in connection with the awarding of contracts for public works and shall consider such other sources of pertinent information as may be available.

(c) Whenever the trade rate range for a class is revised, the salary of each incumbent in a position to which the revised range applies shall be adjusted to the step in the revised range that corresponds to the step received in the previous range; and such salary adjustment shall not affect the date of eligibility for a merit salary adjustment.

(d) The salary which an employee shall receive upon appointment to a trade rate apprenticeship class shall conform to the wage rate provisions found to be prevailing for the apprenticeship.

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19830, Government Code. Reference: Section 19830, Government Code.

§ 599.691. Health and Welfare Plans.

(a) For each class compensated in accordance with the provisions of Section 19830 and for which the salary range is designated by the Department of Personnel Administration as trade rate, the appointing power shall ascertain and report to the Department the prevailing practice in comparable employment for payments by employers under private plans to provide health and welfare benefits to employees.

(b) The Director of the Department of Personnel Administration shall only authorize payments into plans which meet the following standards:

(1) The plan is jointly administered by labor and management.

(2) A plan office is located within the State of California.

(3) Any fund connected with the plan is required to be audited at least annually by an independent, licensed certified public accountant.

(4) Each trustee or administrator of the fund or plan authorized to receive, handle, deal with or draw upon the assets of the fund or plan is required to be bonded.

(c) The Director of Personnel Administration shall report to the State Controller the name of the agency or individual authorized to receive contributions to such fund or funds.

(d) For the purposes of this rule, "nonpermanent employees" are defined as employees whose appointments are of less than six months' duration.

(e) Nonpermanent employees in classes compensated in accordance with the provisions of Section 19830 for whom payments are made by the State into private health and welfare funds may not, during the period of such nonpermanent employment, receive any credits for vacation, retirement, sick leave, or any other related benefits as provided for other state employees for service rendered during the period of such nonpermanent employment.

(f) Any permanent or probationary employee who accepts an appointment on a nonpermanent basis to a class compensated in accordance with the provisions of Section 19830 may elect not to have payments under health and welfare plans as provided in Section 19831 made, in which event the employee will continue to receive credits for benefits which are now or may hereafter be granted directly by the State.

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19830, Government Code. Reference: Sections 19830 and 19831, Government Code.

§ 599.692. (Reserved)

§ 599.693. (Reserved)

§ 599.694. (Reserved)

§ 599.695. (Reserved)

§ 599.696. (Reserved)

§ 599.697. (Reserved)

§ 599.698. (Reserved)

§ 599.699. (Reserved)

Article 6. Overtime

§ 599.700. Definitions.

"Overtime" is authorized time worked in excess of regularly scheduled workweek.

"Compensable" overtime is ordered overtime on work which is in addition to the regular work and which meets the standards set forth in Section 599.704 for which cash compensation or compensating time off is provided.

"Noncompensable" overtime is occasional and casual overtime necessary to meet normal job requirements, for which cash compensation or compensating time off is not provided.

NOTE: Authority cited: Sections 19815.4(d) 19816 and 19843, Government Code. Reference: Sections 19843, 19848 and 19851, Government Code.

HISTORY

1. New Article 6 (Sections 599.700–599.711) filed 9–6–83; effective thirtieth day thereafter (Register 83, No. 37).

CROSS REFERENCE: See Title 2, Division 1, Chapter 1, Subchapter 1, Sections 130–139.1.

§ 599.701. Work Week Group Definitions.

Each position or class in the state service for which a monthly or annual salary range is fixed, whether or not the position or class is subject to state civil service, shall be assigned or reassigned to one the following groups:

(a) Classes and positions with a work week of 40 hours to be known as Work Week Group 1.

(b) Classes and positions for which special provisions are made by rule because of the varying needs of different state agencies and prevailing overtime compensation practice to be known as Work Week Group 4.

NOTE: Authority cited: Sections 19815.4(d), 19816, 19819.1, 19843 and 19849, Government Code. Reference: Sections 19819.1, 19843, 19849 and 19851, Government Code.

§ 599.702. Authorization Required.

In order to be compensable by cash or compensating time off, overtime in Work Week Group 1 and Subgroups 4A, 4B, and 4D must be authorized in advance, except in an emergency, by the appointing authority or its designated representative. This authorization must also be confirmed in writing not later than 10 days after the end of the pay period during which the overtime was worked. Each state agency shall maintain complete and accurate records of all compensable overtime worked by its employees.

NOTE: Authority cited: Sections 19815.4(d), 19816, 19843, 19844 and 19849, Government Code. Reference: Sections 19844 and 19851, Government Code.

§ 599.703. Work Week Group 4.

Classes and positions required the establishment of special provisions governing hours of work and methods of compensation for overtime, shall be assigned to one of the following subgroups of Work Week Group 4, which are hereby established.

4A. Classes and positions with a minimum work week of 40 hours. Required work in excess of the minimum work week is compensable as overtime in accordance with the provisions of Section 599.704. Compensable overtime may be liquidated by compensating time off. When compensating time off is not practicable, the appointing authority may authorize cash compensation.

4B. Classes and positions with a five–day work week with a minimum average of 40 hours a week during any 12 consecutive pay periods, but no specified maximum number of hours per day. Overtime does not accrue for work performed on a normal work day except as provided by Section 599.710. Subject to the provisions of Section 599.708, ordered work on a normal day off is compensable by compensating time off on an hour–for–hour basis not to exceed eight hours. Cash payment for ordered work on a normal day off is not permitted except upon authorization by the Department of Personnel Administration prior to the time the work is performed except as provided by Section 599.710.

4C. Classes and positions with a minimum average work week of 40 hours. The regular rate of pay is full compensation for all time that is required for the employee to perform the duties of the position. Except as otherwise provided in Government Code Section 19853, hours of work in excess of the minimum average work week are not compensable, and shall not be deemed overtime for which compensating time off is provided within the meaning of Government Code Section 19839. If an employee in this subgroup is not required by the appointing power to work a normal workday or part thereof, the employee nevertheless shall receive the regular rate of pay without deduction if the absence does not reduce the employee's average work week below 40 hours within the 12 pay periods ending with the pay period in which the absence occurred.

4D. Classes and positions having conditions or hours of work which do not fall within the above subgroups. The Department of Personnel Administration shall establish such special provisions governing hours of work and overtime compensation as the needs of the service shall require.

NOTE: Authority cited: Sections 19815.4(d), 19816, 19819.1, 19843, 19844 and 19849, Government Code. Reference: Section 19851, Government Code.

HISTORY

1. Editorial correction of classification 4C. (Register 2004, No. 20).

§ 599.703.1. Salary Assurance—Excluded Employees.

An excluded employee is defined in section 599.615(b).

(a) Excluded employees in Work Week Group 4C and those excluded employees in Work Week Group 4D who are not compensated for overtime at 1 1/2 times their hourly salary rate, shall not have their salary reduced (docked) for absences of less than an entire day.

NOTE: Authority cited: Sections 3539.5, 19815.4(d), 19816, 19819.1, 19843 and 19849, Government Code. Reference: Section 19851, Government Code.

HISTORY

1. New section filed 10–29–90 by the Department of Personnel Administration with the Secretary of State; operative 10–31–90 pursuant to Government Code section 3539.5. Submitted to OAL for printing only pursuant to Government Code section 11343.8. (Register 91, No. 3).
2. Change without regulatory effect amending section heading, section, NOTE and HISTORY 1. filed 6–29–92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 27).

§ 599.704. Compensable Overtime.

Overtime is compensable by cash or compensating time off if it meets the following criteria:

(a) Work Week Group 1: Ordered overtime of at least one–quarter hour at any one time.

(b) Work Week Subgroup 4A: Ordered overtime of at least one hour at any one time.

(c) Work Week Subgroup 4B: Ordered overtime of at least one hour on any normal day off.

Overtime will be credited on a one–quarter of an hour basis with a full quarter hour credit to be granted if half or more of the period is worked. Smaller fractional units will not be accumulated.

NOTE: Authority cited: Sections 19815.4(d), 19816, 19843, 19844, 19845, 19846, 19847, 19848, 19849 and 19849.1, Government Code. Reference: Sections 19848 and 19851, Government Code.

§ 599.705. Compensating Time Off.

The time when compensating time off may be taken shall be at the discretion of the appointing power. If the employee fails to take compensating time off at the time designated by the appointing power, the employee shall have waived the right to compensation for such overtime. When compensating time off is ordered, reasonable advance notice (at least 24 hours) should be provided the employee.

Compensation time off may be taken only in units of time of one–eighth hour or multiple thereof.

(a) Compensating time off for employees in Work Week Group 1 shall be earned on a time and one–half basis and may be authorized in lieu of cash compensation. If an employee in Work Week Group 1 is not allowed compensating time off within 12 pay periods following the pay period in which the overtime was worked payment shall be made for such overtime

on the next payroll. Normally, an employee in Work Week Group 1 who has an accumulation of 240 hours or 30 days of authorized overtime shall not be required to work additional overtime.

(b) Compensating time off, when authorized for employees in Work Week Group 4, shall be earned on an hour–for–hour basis unless otherwise specified in the work week subgroup. All compensating time off must be granted by the appointing power within the 12 pay periods next following the pay period during which the overtime is worked. Upon failure of the appointing power to grant this compensating time off within the period provided, the employee may appeal to the Department of Personnel Administration. After hearing such appeal, the Department may order the appointing power to arrange for this time to be taken off before expiration of the nine pay periods from the end of said 12 pay periods and report such arrangement to the Department. At no time may an employee's accumulated overtime exceed 240 hours or 30 days excluding overtime concerning which an appeal is pending. Normally an employee

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who has an accumulation of 240 hours or 30 days of authorized overtime shall not be required to work additional overtime except in cases of emergency, as such overtime is not compensable.

NOTE: Authority cited: Sections 19815.4(d), 19816, 19843, 19844, 19845, 19846, 19847, 19849 and 19849.1, Government Code. Reference: Sections 19848 and 19851, Government Code.

§ 599.705.1. Compensating Time Off (CTO)—Excluded Employees.

An excluded employee is defined in Section 599.615(b).

(a) Notwithstanding rule 599.705, for excluded employees in Work Week Group 1 and 4, the appointing power may, on a case by case basis, extend the period in which CTO may be granted by six (6) pay periods. If the CTO balance is not granted within the six (6) pay periods, the provisions of Section 599.705 shall apply.

(b) Compensating time off for excluded employees in Work Week Group 4A shall be earned on a time and one–half basis and may be authorized in lieu of cash compensation.

NOTE: Authority cited: Sections 3539.5, 19815.4(d), 19816, 19843, 19844, 19845, 19846, 19847, 19849 and 19849.1, Government Code. Reference: Sections 19848 and 19851, Government Code.

HISTORY

1. New section filed by Department of Personnel Administration with Secretary of State on 12–30–87; operative 12–30–87. Submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 88, No. 7).
2. Amendment filed by Department of Personnel Administration with the Secretary of State on 9–9–88; operative 9–9–88. Submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 88, No. 41).
3. Change without regulatory effect amending section heading, section, and NOTE filed 6–29–92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 27).

§ 599.706. Cash Compensation.

Employees in Work Week Group 1 or Work Week Subgroup 4A may be compensated for compensable overtime by cash compensation. Employees in Work Week Subgroups 4B and 4D, except upon movement between departments may not receive cash compensation for compensable overtime unless authorized in advance by the Department of Personnel Administration or Sections 599.703 and 599.710. Unless otherwise specified by the Department pursuant to Section 599.703, the rate of cash compensation paid for compensable overtime shall be time and one–half the hourly equivalent of the employee's monthly salary as of the time the overtime was worked, which shall be determined as provided in Section 599.670, except that in no event shall the rate of compensation for Group 4 employees exceed the hourly rate established by the Director or designee of the Department of Personnel Administration.

NOTE: Authority cited: Sections 19815.4(d), 19816, 19843, 19844, 19845, 19846, 19847, 19849 and 19849.1, Government Code. Reference: Sections 19848 and 19851, Government Code.

§ 599.707. Transfers.

When an employee leaves the employment of one state agency and enters the employment of another state agency, without a separation from service within the meaning of Government Code Section 19839, the state agency the employee is leaving shall compensate or allow compensating time off for all compensable overtime to the employee's credit prior to transfer. The rate of compensation for compensable overtime in such cases shall be the same as that provided under Section 599.706.

When the movement of an employee is the result of the transfer of a function or the administration of a law from one state agency to another state agency, the provisions of this section are not applicable.

NOTE: Authority cited: Sections 19815.4(d), 19816, 19843, 19844, 19845, 19846, 19847, 19849 and 19849.1, Government Code. Reference: Sections 19839, 19848 and 19851, Government Code.

HISTORY

1. Editorial correction of opening sentence (Register 95, No. 40).

§ 599.708. Call Back Time.

An employee in Work Week Group 1 or Work Week Subgroup 4A who has completed a normal work shift, or an employee in Work Week Subgroups 4B or 4D on an authorized day off, when ordered back to work, shall be credited with a minimum of four hours' work time provided the call back to work is without having been notified prior to completion of the work shift, or the notification is prior to completion of the work shift and the work begins more than three hours after the completion of the work shift.

When such an employee is called back under these conditions within four hours of the beginning of a previous call or an additional call is received while still working on an earlier call back, the employee shall not receive an additional four hours' credit for the new call back.

When such an employee is called back within four hours of the beginning of the employee's next shift, call back credit shall be received only for the hours remaining before the beginning of the employee's next shift.

When staff meetings, training sessions, or work assignments are regularly scheduled on an employee's authorized day off, the employee shall receive call back compensation; when staff meetings and training sessions are regularly scheduled on an employee's normal work day and outside the employee's normal work shift, overtime compensation shall be received in accordance with the regulations governing overtime.

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19849.1, Government Code. Reference: Sections 19843, 19844, 19845, 19846, 19847, 19848, 19849 and 19851, Government Code.

§ 599.709. Minimum Work Time.

Each time an intermittent employee is ordered to work, the employee shall be credited with a minimum of four hours' work time.

NOTE: Authority cited: Sections 19815.4(d) and 19816, Government Code. Reference: Section 19100, Government Code.

HISTORY

1. Editorial correction of text (Register 95, No. 40).

§ 599.710. Emergency Overtime.

Employees in Work Week Subgroups 4A and 4B required and authorized in advance by the appointing power to work overtime as a result of an emergency situation, shall be compensated for overtime worked in accordance with the provisions of Work Week Group 1 for the duration of the emergency without prior approval of Department of Personnel Administration.

For the purposes of this section, an emergency situation is one declared by the Governor or the appointing power and is defined as a situation where there is extreme peril to persons and property caused by such conditions as fire, flood, storm, epidemic, riot, or earthquake.

NOTE: Authority cited: Sections 19815.4(d), 19816, 19844 and 19849, Government Code. Reference: Sections 19843 and 19851, Government Code.

§ 599.711. Overtime Compensation During Job Actions.

With the approval of the Director of Department of Personnel Administration, Work Week Group 4A, 4B and 4C employees who are assigned to work overtime because of strike or other job action by State employees may be temporarily reassigned to Work Week Group 1 for purpose of providing overtime compensation during such job actions; and Work Week Group 4D employees who are assigned to work overtime or are moved to a different assignment because of a strike or other job action by State employees may be temporarily reassigned to another work week group or subgroup when such action is needed to provide equitable overtime compensation.

Employees so reassigned shall not be subject to the maximum overtime rate prescribed for Work Week Group 4 employees.

NOTE: Authority cited: Sections 19815.4(d), 19816, 19844 and 19849, Government Code. Reference: Sections 19843 and 19851, Government Code.

§ 599.712. (Reserved)

§ 599.713. (Reserved)

Article 7. Moving and Relocation Expenses

§ 599.714. Scope.

(a) Whenever a state officer or employee is required by any appointing power because of a change in assignment, promotion or other reason related to his/her duties, to change his/her place of residence, such officer,

agent or employee shall receive his/her actual and necessary moving and relocation expenses incurred by him/her both before and after and by reason of such change of residence, subject to the provisions of this article.

(b) For the purposes of this article, a move occurs on the official reporting date to the new headquarters, and a change in residence is reasonably to be required when the following conditions are met:

(1) The officer's or employee's officially designated headquarters is changed for the advantage of the State, which includes the following:

(A) A promotion offered by any appointing authority; or

(B) A non–promotional transfer deemed to be in the best interests of the State by the officer's or employee's appointing authority; or

(C) A transfer of an officer or employee by his/her or another appointing authority in lieu of a layoff of the officer or employee.

(2) The normal commute distance must be as designated between all the following locations:

(A) At least 56 kilometers (35 miles) between the old headquarters and the new headquarters; and

(B) At least 56 kilometers (35 miles) between the old residence and the new residence; and

(C) At least 56 kilometers (35 miles) between the old residence and the new headquarters; and

(D) The new residence shall not be farther from the new headquarters than the old residence is from the new headquarters.

(c) A change of residence is not deemed reasonably to be required for voluntary non–promotional transfers in response to general requests which specify that moving and relocation expenses will not be paid, or for any non–promotional transfer which is primarily for the benefit of the officer or employee.

(d) Reimbursement for moves that do not conform to the established criteria may be granted when the Director of the Department of Personnel Administration has determined in advance that the officer or employee will be subject to unusual and unavoidable hardship by reason of the change of residence.

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19820, Government Code. Reference: Section 19841, Government Code.

HISTORY

1. New Article 7 (Sections 599.714–599.724, not consecutive), including redesignation of Section 599.722 to Article 7 filed 9–6–83; effective thirtieth day thereafter (Register 83, No. 37). For prior history of Section 599.722, see Registers 83, No. 17; and 82, No. 42.

CROSS REFERENCE: See Title 2, Division 2, Chapter 1, Sections 732–739.

2. Editorial correction of subsections (a) and (c) (Register 95, No. 40).

§ 599.714.1. Scope—Excluded Employees.

(a) Whenever a permanent state officer or employee is required by any appointing power because of a change in assignment, promotion or other reason related to his/her duties, to change his/her place of residence, such officer, agent or employee shall receive reimbursement of his/her actual and necessary moving and relocation expenses incurred by him/her both before and after and by reason of such change of residence, subject to the provisions and limitations of this article.

(b) For the purposes of this article, a move occurs on the official reporting date to the new headquarters, and when a change in residence is reasonably to be required. Relocation shall be paid, when the following conditions are met:

(1) The officer's or employee's officially designated headquarters is changed for the advantage of the State, which includes the following:

(A) A promotion offered by any appointing authority, not including those movements that the employee could make through transfer, reinstatement or reemployment eligibility; or

(B) An involuntary transfer initiated by and at the discretion of the appointing authority,

(C) An involuntary transfer required to affect a mandatory reinstatement following:

(I) termination of a career executive or exempt appointment

(II) leave of absence

(III) rejection from probation

(D) any involuntary transfer required to affect a mandatory reinstatement following the expiration or involuntary termination of a temporary appointment, limited term appointment or training and development assignment when:

(I) the employee did not relocate to accept the appointment or assignment, or

(II) the employee did relocate, at State expense, to accept the appointment or assignment.

(2) The move must be a minimum of 50 miles plus the number of miles between the old residence and the old headquarters.

(3) Relocations that meet the above criteria will be fully reimbursed to the extent and limitations in this article.

(c) A change of residence is not deemed reasonably to be required for voluntary transfers or permissive reinstatements, with or without a salary increase, in response to general requests which specify that moving and relocation expenses will not be paid, or for any non–promotional transfer which is primarily for the benefit of the officer or employee.

(d) When an appointment does not meet the criteria in (a) and (b) the appointing power may, at his/her discretion, determine in advance that it is in the best interest of the State to reimburse all or part of the actual reasonable and necessary relocation expenses provided in this article as an incentive to recruit employees to positions that are designated by the appointing power as difficult to fill or because of outstanding qualifications of the appointee, or due to unusual and unavoidable hardship to the employee by reason of the change of residence.

(1) Relocations that meet this criteria shall be reimbursed only for the items in this article specifically authorized by the appointing power and may be subject to further limitations designated by the appointing power.

(2) Upon determination that any reimbursement will be made, the appointing power shall:

(A) Determine which provisions will apply to the relocation and establish any additional limitations to those provisions such as dollar limits, weight limits or time limits.

(B) Notify the employee, in writing, of specific allowable reimbursements prior to the move.

(e) Requirements and limitations specified in this article may not be waived or exceeded by the appointing power.

(f) Unauthorized relocation expenses and relocation expenses incurred prior to receipt of a written notice of allowable relocation expenses are the responsibility of the employee.

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19820, Government Code. Reference: Section 19841, Government Code.

HISTORY

1. New section filed 12–27–95; operative 1–1–96. Submitted to OAL for printing only pursuant to Government Code section 3539.5 (Register 95, No. 52).

§ 599.715. Allowance for Miscellaneous Expenses.

An officer or employee who is required to change his/her place of residence according to Section 599.714 may receive up to $100 for miscellaneous expenses upon certification that such expenses were incurred because of the relocation and were not otherwise reimbursed. Up to $200 for miscellaneous expenses may be authorized upon submittal of documentation of the payment of all such expenses and certification that the expenses were related to dissolution of the old household and/or the establishment of a new household.

(a) Reimbursement for the installation and/or connection of appliances or antennas purchased after the change of residence shall be allowed provided no claim is made for dismantling, disconnecting, or shipment of a similar item, and

(b) Installation and/or connection occurs within ten days of the establishment of a new residence.

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19820, Government Code. Reference: Section 19841, Government Code.

§ 599.715.1. Reimbursement for Miscellaneous Expenses—Excluded Employees.

An officer or employee who is required to change his/her place of residence according to Section 599.714.1 may receive reimbursement for up

to $200 for miscellaneous expenses upon submittal of documentation of the payment of all such expenses and certification that the expenses were related to dissolution of the old household and/or the establishment of a new household and were not otherwise reimbursed.

(a) Reimbursement for the installation and/or connection of appliances or antennas purchased after the change of residence shall be allowed provided no claim is made for installation and/or connection of a similar item in the movement of household goods, and installation and/or connection occurs within sixty days of the establishment of a new residence.

(b) Deposits are not reimbursable.

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19820, Government Code. Reference: Section 19841, Government Code.

HISTORY

1. New section filed 12–27–95; operative 1–1–96. Submitted to OAL for printing only pursuant to Government Code section 3539.5 (Register 95, No. 52).

§ 599.716. Reimbursement for Sale of a Residence.

(a) Whenever a state officer or employee is required, as defined in Section 599.714 to change his/her officially designated headquarters which requires the sale of his/her residence the officer or employee shall be reimbursed only for actual and necessary selling costs as determined by prevailing practices within the area of sale. Claims for reimbursement must be substantiated by the seller's closing escrow statement and other pertinent supportive documents. Seller's points are not eligible for reimbursement and claims will include only those items which are listed in the following subsection.

(b) Actual and necessary selling costs are:

(1) Brokerage commission; and

(2) Title insurance; and

(3) Escrow fees; and

(4) Prepayment penalties; and

(5) Taxes, charges or fees fixed by local authority required to consummate the sale of the residence; and

(6) Miscellaneous sellers costs customary to the area, not to exceed $200.

(c) Actual and necessary selling costs will be reimbursed for that portion of the dwelling the employee actually occupies if the employee or officer owns and resides in a multi–family dwelling.

(d) Except as provided in subsection (e), claims for the sale of a residence must be submitted within one year following the date the officer or employee reports to the new official headquarters. An extension of not more than six months may be granted by the Director of the Department of Personnel Administration upon receipt of evidence warranting such extension prior to the expiration of the one year period.

(e) For nonrepresented employees as defined in Section 599.619 of these regulations, claims for the sale of a residence must be submitted within two years following the date the officer or employee reports to the new official headquarters. No extensions will be allowed thereafter.

NOTE: Authority cited: Sections 3517.8, 19815.4(d), 19816 and 19820, Government Code. Reference: Section 19841, Government Code.

HISTORY

1. Amendment of subsection (d) and new subsection (e) filed by the Department of Personnel Administration with the Secretary of State on 8–20–84; effective upon filing. Submitted to OAL for printing only pursuant to Government Code Section 11343.8 (Register 85, No. 18).

2. Editorial correction of subsection (a) (Register 95, No. 40).

§ 599.716.1. Reimbursement for Sale of a Residence—Excluded Employee.

(a) Whenever a state officer or employee is required, as defined in Section 599.714.1 to change his/her officially designated headquarters and this requires the sale of his/her residence the officer or employee shall be reimbursed only for actual and necessary selling costs as determined by prevailing practices within the area of sale. Claims for reimbursement must be substantiated by the seller's closing escrow statement and other pertinent supportive documents. Seller's points are not eligible for reimbursement. Claims will include only those items which are listed in the following subsection.

(b) Actual and necessary selling costs are:

(1) Brokerage commission; and

(2) Title insurance; and

(3) Escrow fees; and

(4) Prepayment penalties; and

(5) Taxes, charges or fees fixed by local authority required to consummate the sale of the residence; and

(6) Miscellaneous sellers costs customary to the area, not to exceed $200.

(c) Actual and necessary selling costs will be reimbursed for that portion of the dwelling the employee actually occupies if the employee or officer owns and resides in a multi–family dwelling.

(d) Commissions and fees will not be reimbursed if paid to the employee, the employee's spouse or the spouse's employer, or to any member of the household.

(e) Claims for the sale of a residence must be submitted within two years following the date the officer or employee reports to the new official headquarters. No extensions will be allowed thereafter.

(f) Rebates to employees will be deducted from the claim prior to reimbursement.

NOTE: Authority cited: Sections 3517.8, 19815.4(d), 19816 and 19820, Government Code. Reference: Section 19841, Government Code.

HISTORY

1. New section filed 12–27–95; operative 1–1–96. Submitted to OAL for printing only pursuant to Government Code section 3539.5 (Register 95, No. 52).

2. Editorial correction of NOTE (Register 96, No. 38).

§ 599.717. Settlement of a Lease.

(a) Whenever an officer or employee is required, as defined by Section 599.714, to change his/her officially designated headquarters and such change requires the settlement of a lease on the employee's old residence, the officer or employee shall receive the actual and necessary cost of settlement of the unexpired lease to a maximum of one year.

(b) Reimbursement shall not be allowed if it is determined that the officer or employee knew or reasonably should have known that a transfer according to Section 599.714 was imminent before entering into a lease agreement.

(c) Claims for settlement of a lease shall be documented and itemized and submitted within six months following the new reporting date except that the Director of the Department of Personnel Administration may grant an extension of not more than three months upon receipt of evidence warranting such extension prior to the expiration of the six–month period.

(1) The claim may be a signed agreement between the officer or employee and the lessor or it may be made unilaterally by the officer or employee.

(2) In no event shall the final settlement by the State exceed one year's rent nor shall it include any costs, deposits or fees.

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19820, Government Code. Reference: Section 19841, Government Code.

HISTORY

1. Editorial correction of subsection (b) (Register 95, No. 40).

§ 599.717.1. Settlement of a Lease—Excluded Employee.

(a) Whenever an officer or employee is required, as defined by Section 599.714.1(a) to change his/her place of residence and such change requires the settlement of a lease on the employee's old residence, the officer or employee shall receive the actual and necessary cost of settlement of the unexpired lease to a maximum of one year. In no event shall the lease settlement include any costs, deposits or fees.

(1) Reimbursement shall not be allowed if it is determined that the officer or employee knew or reasonably should have known that a transfer according to Section 599.714.1 was imminent before entering into a lease agreement.

(2) Claims for settlement of a lease shall include a lease agreement signed by both the employee and the lessor, and shall be itemized and submitted within nine months following the new reporting date.

(b) If an employee is required under 599.714.1(a) to change his/her place of residence and such notice to the employee is insufficient to provide the employee the notice period required by a month to month rental agreement, reimbursement may be claimed for the number of days penalty paid by the employee to a maximum of 30 calendar days.

(1) Reimbursement shall not be allowed for days that the employee failed to notify the landlord after notification by the employer of the reassignment.

(2) Claims shall be accompanied by a copy of the rental agreement, an itemized receipt for the penalty and the name and address of the individual or company to which the rental penalty has been paid.

(c) No reimbursement shall be made for forfeiture of cleaning or security deposits, or for repair, replacement or damages of rental property.

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19820, Government Code. Reference: Section 19841, Government Code.

HISTORY

1. New section filed 12–27–95; operative 1–1–96. Submitted to OAL for printing only pursuant to Government Code section 3539.5 (Register 95, No. 52).

§ 599.718. Expenses for Moving Household Effects.

For the purpose of these regulations, household or personal effects include items such as furniture, clothing, musical instruments, household appliances, foods, and other items which are usual or necessary for the maintenance of a household. Household effects shall not include automobiles; other motor vehicles; farm tractors, implements, and equipment; trailers with or without other property; boats; all animals, livestock or pets; belongings which are not the property of the immediate family of the officer or employee; belongings related to commercial enterprises engaged in by the officer or employee; firewood; fuels; bricks, sand, ceramic wall tile, wire fence or other building materials; or wastepaper and rags.

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19820, Government Code. Reference: Section 19841, Government Code.

HISTORY

1. Editorial correction of second sentence (Register 95, No. 40).

§ 599.718.1. Expenses for Moving Household Effects—Excluded Employees.

(a) For the purpose of these regulations, household or personal effects include items such as furniture, clothing, musical instruments, household appliances, food, and other items which are usual or necessary for the maintenance of one household.

(b) Household effects shall not include items connected to a for profit business, items from another household, items that are permanently affixed to the property being vacated or items that would normally be discarded or recycled.

(c) At the discretion of the appointing power, other items may be considered household effects based on a consideration of the estimated cost of the move and a review of the items listed on the inventory. Expenses related to moving items other than those described in (a) that have not been approved by the appointing power shall be the responsibility of the employee.

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19820, Government Code. Reference: Section 19841, Government Code.

HISTORY

1. New section filed 12–27–95; operative 1–1–96. Submitted to OAL for printing only pursuant to Government Code section 3539.5 (Register 95, No. 52).

§ 599.719. Reimbursement for Moving Household Effects.

Reimbursement shall be allowed for the cost of moving an employee's effects either via commercial household goods carrier or by the employee. No reimbursement will be allowed for the hiring of casual labor.

(a) Either reimbursement for actual and necessary expenses incurred under this article for the packing, insurance, transportation, storage–in–transit (not including warehouse handling charges except when required by interstate tariffs), unpacking, and installation at the new location of an employee's household effects shall be allowed subject to the following limits:

(1) Weight of household effects for which expenses may be reimbursed shall not exceed 5,000 kilograms (11,000 pounds).

(2) Duration of storage–in–transit for which charges may be reimbursed shall not exceed 60 calendar days.

(3) Rates at which reimbursement is allowed shall not exceed the minimum rates, at the minimum declared valuation, established by the California Public Utilities Commission for household goods carriers, unless a higher rate is approved by the Department of General Services.

(4) Cost of insurance for which reimbursement is allowed shall not exceed the cost of insurance coverage at $1.50 valuation for each pound of household effects shipped by household goods carrier.

(b) Or reimbursement shall be allowed as follows for expenses related to the movement by the employee of his/her household effects in a truck or trailer.

(1) Rental of a truck or trailer from a commercial establishment. When not included in the truck rental rate, the cost of gasoline will be reimbursed. If the total costs exceed $300, the claim must be accompanied by at least three written commercial rate quotes. Reimbursement will be made at the rates (including gasoline) which result in the lowest cost;

(2) Distance at the rates provided in Section 599.630(b) or 599.631(b) for noncommercial privately–owned motor vehicles used in transporting the employee's household effects.

(c) Reimbursement for more than one trip may be allowed if the employee's agency has determined that the total cost would be less than the cost of movement by a commercial household goods carrier.

(d) The maximum allowances prescribed by this section may be exceeded in cases where the Director of the Department of Personnel Administration has determined in advance that the change of residence will result in an unusual and unavoidable hardship for the officer or employee and has determined the maximum allowances to be received by said officer or employee. Claims for exceptions to the 5,000 kilograms (11,000 pounds) statutory limit will be considered only when it has been determined that every reasonable effort had been made to conform to statute.

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19820, Government Code. Reference: Section 19841, Government Code.

HISTORY

1. Editorial correction of subsection (d) (Register 95, No. 40).

§ 599.719.1. Reimbursement for Moving Household Effects—Excluded Employees.

Reimbursement shall be allowed for the cost of moving an employee's effects either via commercial household goods carrier or by the employee. Reimbursements under this rule shall not exceed the cost of moving the employee's household goods from the old residence to the new headquarters plus 50 miles unless the appointing authority determines that a longer move is in the best interest of the State. Any additional expense associated with an interstate or intercountry move shall be approved in advance by the appointing power. No reimbursement will be allowed for the hiring of casual labor.

(a) When the employee retains a commercial mover, reimbursement for actual and necessary expenses incurred by a commercial mover under this article for the packing, insurance, one pickup, transportation, storage–in–transit (not including warehouse handling charges except when required by interstate tarriffs), one delivery, unpacking, and installation at the new location of an employee's household effects shall be allowed subject to the following:

(1) Weight of household effects for which expenses may be reimbursed shall not exceed 5,000 kilograms (11,000 pounds).

(2) Duration of storage–in–transit for which charges may be reimbursed shall not exceed 60 calendar days unless a longer period of storage is approved in advance by the appointing authority based on hardship to the employee.

(3) Rates at which reimbursement is allowed shall not exceed the minimum rates, at the minimum declared valuation, established by the Cali-

fornia Public Utilities Commission for household goods carriers, unless a higher rate is approved by the Department of General Services.

(4) Cost of insurance for which reimbursement is allowed shall not exceed the cost of insurance coverage at $2.00 valuation for each pound of household effects shipped by household goods carrier.

(5) Claims for exceptions to the 11,000 pounds statutory limit will be considered by the appointing authority, up to a maximum of 23,000 pounds, only when it has been determined that every reasonable effort had been made to conform to the limit. Exceptions to the number of pick–ups and deliveries may be made by the appointing power when it is reasonably necessary and in the best interest of the state.

(b) When the employee does not retain a commercial mover, reimbursement shall be allowed as follows for expenses related to the movement by the employee of his/her household effects in a truck or trailer.

(1) Rental of a truck or trailer from a commercial establishment. When not included in the truck rental rate, the cost of gasoline, rental of a furniture dolly, packing cartons and protective pads will be reimbursed. If the total costs exceed $1,000 the claim must be accompanied by at least one written commercial rate quote. Reimbursement will be made at the rate (including gasoline) which results in the lowest cost; or

(2) Mileage reimbursement at the rates provided in Section or 599.631.1(b) for noncommercial privately–owned motor vehicles used in transporting the employee's household effects.

(3) Reimbursement for more than one trip by the method described in (b)(1) or (2) above may be allowed if the employee's agency has determined that the total cost would be less than the cost of movement by a commercial household goods carrier.

(c) If household goods are moved exclusively in the employee's personal vehicle, reimbursement for mileage may be claimed at the State mileage rate. No other mileage or moving expense shall be allowed.

(d) All claims for the reimbursement of the movement of household goods require receipts. Unless an exception is granted by the appointing authority, claims shall be submitted no later than 2 years and 60 days from the effective date of appointment or 15 days prior to voluntary separation, whichever is first.

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19820, Government Code. Reference: Section 19841, Government Code.

HISTORY

1. New section filed 12–27–95; operative 1–1–96. Submitted to OAL for printing only pursuant to Government Code section 3539.5 (Register 95, No. 52).

§ 599.720. Reimbursement for Movement of a Trailer Coach.

For the movement of a trailer coach which contains the household effects of an officer or employee, and has served as the employee's residence at the previous location at the time of notification of relocation, reimbursement will be allowed as follows:

(a) For tolls, taxes, charges, fees or permits fixed by the State or local authority required for the transportation or assembly of trailer coaches actually incurred by the employe.

(b) Where transportation of the trailer coach is by the employee distance may be claimed for a one–way trip at the rates specified in Section 599.630(b) or 599.631(b).

(c) For charges not to exceed $2,000 for disassembly and assembly of the trailer, including but not limited to, disassembly and assembly of trailer, skirts, awnings, porch, the trailer coach itself and other miscellaneous documented, itemized expenses related to the dissolution of the old household and/or the establishment of the new household.

(1) Three competitive bids shall be obtained and reimbursement up to the maximum, allowed at the lowest bid.

(2) Reimbursement received under this section precludes any additional reimbursement under Section 599.715.

(3) Exceptions to this section may be granted by the Director of the Department of Personnel Administration if it has been documented that the movement of the trailer coach was conducted in the most economical fashion available and that the total cost of said movement did not exceed the probable cost of moving and relocation expenses incurred by a comparable conventional move.

(d) Where transportation of the trailer coach is by a commercial mobile home transporter:

(1) Movement of the trailer coach at rates not exceeding the minimum rates established by the California Public Utilities Commission for mobile home transporters;

(2) Charges at P.U.C. minimum rates to obtain permits identified above;

(3) Storage–in–transit not in excess of 60 calendar days at P.U.C. minimum rates.

(e) Reimbursement will not be allowed for:

(1) Purchase of parts and materials except for those items necessary to comply with minimum requirements of the California Administrative Code, Title 25, Chapter 5.

(2) Repairs including tires and tubes, and breakdown in transit.

(3) Costs associated with maintenance of the trailer coach or for separate shipment of household effects by a household goods carrier which cannot be transported in the trailer coach.

(f) Reimbursement will be allowed for the actual cost supported by voucher of rental and installation of axles necessary to comply with the requirements of Chapter 5, Article 1 of the California Vehicle Code.

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19820, Government Code. Reference: Section 19841, Government Code.

§ 599.720.1. Reimbursement for Movement of a Mobile Home—Excluded Employees.

For the movement of a mobile home which contains the household effects of an officer or employee, and has served as the employee's residence at the previous location at the time of notification of relocation, reimbursement will be allowed as follows:

(a) Where transportation of the trailer coach is by a commercial mobile home transporter and receipts are submitted:

(1) For tolls, taxes, charges, fees or permits fixed by the State or local authority required for the transportation or assembly of trailer coaches actually incurred by the employee.

(2) Charges for disassembly and assembly of the trailer, including but not limited to, disassembly and assembly of trailer, skirts, awnings, porch, the trailer coach itself and other miscellaneous documented, itemized expenses related to the dissolution of the old household and/or the establishment of the new household, up to $2,500 unless an exception is approved by the appointing power.

(3) Reimbursement will be allowed for the actual cost supported by voucher of rental and installation of wheels and axles necessary to comply with the requirements of Chapter 5, Article 1 of the California Vehicle Code.

(4) Three competitive bids shall be obtained and reimbursement will be approved at the lowest bid. Based on information documenting the attempt to obtain three bids as provided by the employee, the appointing power may waive the three bid requirement.

(5) Reimbursement received under this section precludes any additional reimbursement for miscellaneous expenses under Section 599.715.1.

(6) Movement of the trailer coach at rates not exceeding the minimum rates established by the California Public Utilities Commission for mobile home transporters:

(7) Charges at P.U.C. minimum rates to obtain permits identified above;

(8) Storage–in–transit for up to 60 calendar days at P.U.C. minimum rates, unless an extension is approved by the appointing authority.

(b) Where transportation of the coach is by the employee, expense may be claimed for a one–way trip by submitting gasoline receipts.

(c) Reimbursement will not be allowed for:

(1) Purchase of parts and materials except for those items necessary to comply with minimum requirements of the California Administrative Code, Title 25, Chapter 5.

(2) Repairs including tires and tubes, and breakdown in transit.

(3) Costs associated with maintenance or repair of the trailer coach.

(4) Costs for separate shipment of household effects by a household goods carrier unless that is determined to be the most economical method of transport.

(5) Costs associated with the movement or handling of permanent structures.

(d) All claims related to the movement of a trailer coach and the household goods therein require receipts and shall be submitted no later than 2 years and 60 days from the effective date of appointment, or 15 days prior to voluntary separation, whichever is first. No extensions will be granted.

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19820, Government Code. Reference: Section 19841, Government Code.

HISTORY

1. New section filed 12–27–95; operative 1–1–96. Submitted to OAL for printing only pursuant to Government Code section 3539.5 (Register 95, No. 52).

§ 599.721. Relocation Allowance—Represented Employees.

A represented employee is defined in Section 599.621.

(a) When eligibility exists in accordance with Section 599.714, a represented employee shall be reimbursed for actual lodging expense, supported by voucher, plus meal and incidental expenses in accordance with the applicable provisions of a Memorandum of Understanding while locating a permanent residence at the new location.

(1) The daily allowance shall not exceed the maximum subsistence authorized by the applicable provisions of a Memorandum of Understanding.

(2) The allowance shall not be paid for more than 60 days however this period may be exceeded in cases where the Department of Personnel Administration has determined in advance that the change of residence will result in an unusual and unavoidable hardship for the represented employee and has determined the maximum allowances to be received by said employee.

(3) Represented employees who do not furnish receipts for lodging when claiming lodging expenses will be reimbursed in accordance with Section 599.621(c)(1).

(4) The represented employee may exclude at his/her option interruptions caused by sick leave, vacation or other authorized leave of absence.

(5) The relocation allowance shall terminate immediately upon establishment of a permanent residence. The department shall determine when a permanent residence has been established.

(b) Meal expenses arising from one day trips to the new location for the sole purpose of locating housing shall be reimbursed in accordance with the applicable provisions of a Memorandum of Understanding. The period claimed shall be included in the computation of the 60–day relocation period.

NOTE: Authority cited: Sections 19815.4(d), 19816, 19820 and 19841, Government Code. Reference: Section 19841, Government Code.

HISTORY

1. New section filed 2–9–84 (corrected copy refiled 2–27–84); effective thirtieth day thereafter (Register 84, No. 8).
2. Editorial correction of HISTORY NOTES printed in error in Register 84, Nos. 8 and 12 (Register 84, No. 15).

§ 599.722. Relocation Subsistence Reimbursement and Mileage—Excluded Employees.

An excluded employee is defined in Section 599.619.

(a) If eligible under Section 599.714(a), an officer or employee shall be reimbursed for actual lodging, supported by a receipt, and meal and incidental expenses in accordance with and not to exceed the rates established in Section 599.619(a)(1) and (2) while locating a permanent residence at the new location. Employees who do not furnish receipts for lodging may be reimbursed for meals only in accordance with 599.619(a). A permanent residence is typically an abode that is purchased or rented on a monthly basis, of a type that provides long–term living accommodations, where any utilities are hooked up (gas, electric, cable, phone), and mail is delivered.

(1) Reimbursement may be claimed for up to 60 days, except an extension of up to 30 days may be granted when the Appointing power has determined in advance that the delay of change of residence is a result of unusual and unavoidable circumstances that are beyond the control of the officer or employee. The maximum reimbursement to be received by said officer or employee shall not exceed the equivalent dollar amount of 60 days of full meals, incidentals, and receipted lodging.

(2) Interruptions in relocation caused by sick leave, vacation or other authorized leaves of absence shall be reimbursable at the option of the employee providing the employee remains at the new location and is actively seeking permanent residence.

(3) The relocation subsistence claim shall terminate immediately upon establishment of a permanent residence. The appointing power shall determine when a permanent residence has been established.

(4) Partial days shall count as full days for the purpose of computing the 60–day period.

(b) Upon approval of the Appointing Power, meals and/or lodging expenses, for up to fourteen days, arising from trips to the new location for the sole purpose of locating housing shall be reimbursed in accordance with Section 599.619(a)(1) and (2), or 599.619(c)(1), or 599.619(d). Claims for reimbursement of meals/lodging expenses in this item are limited to those incurred after receipt of formal written authorization for relocation and prior to the effective date of appointment. The period claimed shall be included in the computation of the 60–day relocation period.

(c) Reimbursement for travel from the old residence to the new headquarters may be claimed one way one time and shall not exceed the mileage rate allowed in 599.631(a).

NOTE: Authority cited: Section 3539.5, Government Code. Reference: Section 19841, Government Code.

HISTORY

1. Redesignation of Section 599.722 to Article 7 filed 9–6–83; effective thirtieth day thereafter (Register 83, No. 37). For prior history, see Registers 83, No. 17 and 82, No. 42.
2. Amendment filed by Department of Personnel Administration with the Secretary of State on 8–27–85; effective upon filing. Submitted to OAL for printing only pursuant to Government Code Section 11343.8 (Register 85, No. 39).
3. Amendment filed by Department of Personnel Administration with the Secretary of State on 6–27–88 pursuant to Government Code Section 3517.8. Submitted to OAL for printing only pursuant to Government Code Section 11343.8 (Register 88, No. 31).
4. Amendment of section heading, subsections (a) and (b) and NOTE filed 12–24–93; operative 1–1–94. Submitted to OAL for printing only pursuant to Government Code section 3539.5 (Register 94, No. 4).
5. Amendment of section heading and section filed 12–27–95; operative 1–1–96. Submitted to OAL for printing only pursuant to Government Code section 3539.5 (Register 95, No. 52).
6. Editorial correction of subsection (a)(2) (Register 96, No. 38).
7. Amendment of subsection (a) filed 7–1–97; operative 7–1–97 pursuant to Government Code section 11343.4(d). Submitted to OAL for printing only pursuant to Government Code section 3539.5 (Register 97, No. 27).

§ 599.723. Travel and Moving Expenses of Persons Who Change Their Place of Residence to Accept Employment with the State.

Reimbursement will be allowed for a part of the travel and moving expenses of professional and technically trained persons who change their place of residence to accept employment with the State under the following conditions:

(a) In the case of an applicant for employment by the Trustees of the California State University, the employee must have been appointed to a position or class for which the Trustees have certified that such expenditure is necessary in order to recruit qualified persons needed by the California State University. In the case of any other applicant, the employee must have been appointed to a position or class for which the Department of Personnel Administration and the appointing power have certified that such expenditure is necessary in order to recruit qualified persons needed by the State.

(b) The employee must have changed his/her place of residence for the purpose of accepting employment with the State.

(c) Reimbursement for travel from the old residence to the new residence shall be at the rate of 6 cents per mile. Reimbursement for travel expenses of members of the employee's family will not be allowed.

(d) Reimbursement for moving expenses will be allowed in accordance with Sections 599.718 and 599.724(a). Approval of the Department of Finance is required on any claim under this subsection in excess of $1000.

(e) If an employee whose travel and moving expenses have been so paid does not continue his/her employment with that State department for a period of two years (unless the discontinuance of his/her employment was the result of death, prolonged illness, disability, unacceptability of the employee to that state department, or similar eventualities beyond the control of the employee as determined by the appointing power), he/she shall repay the following percentage of the amount received as reimbursement for such travel and moving expenses:

100 percent if employed less than 6 months.
75 percent if employed 6 months but less than 12 months.
50 percent if employed 12 months but less than 18 months.
25 percent if employed 18 months but less than 2 years.

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19820, Government Code. Reference: Section 19842, Government Code.

§ 599.723.1. Travel and Moving Expenses of Persons Who Are Required to Change Their Place of Residence in Order to Accept Employment With the State – Excluded Employees.

(a) Reimbursement may be allowed for all or part of the travel and moving expenses of professional and technically trained persons who are required to change their place of residence to accept employment with the State under the following conditions:

(1) The employee must have been appointed to a position or class for which the appointing power has certified that such expenditure is necessary in order to recruit qualified persons needed by the State.

(2) The employee must have changed his/her place of residence for the purpose of accepting employment with the State.

(3) The employee is new to State employment or reinstating to State employment after a permanent separation.

(4) The established headquarters is more than 75 miles from the employee's primary residence.

(b) An employee who meets the criteria established in (a) above may, at the discretion of the appointing power, be reimbursed for relocation expenses as follows:

(1) Reimbursement for the expenses for the movement and storage of household goods in accordance with 599.718.1, 599.719 and 599.724.1 to a maximum of $1,000.

(2) Reimbursement for travel from the old residence to the new residence at the rate of 9 cents per mile. Reimbursement for travel expenses of members of the employee's family will not be allowed.

(c) With advance approval from the Director, Department of Personnel Administration, an employee who meets the criteria in (a) may, at the discretion of the appointing power be reimbursed for relocation expenses, in addition to those in (b)(1) and (b) above, for all or part of the following:

(1) Reimbursement for a maximum of 30 days of temporary lodging and meals at the new headquarters location, limited to the conditions, maximums and receipt requirements applicable to state employees travel reimbursement as set forth in 599.619(a) and (b). Up to 14 of the 30 days may be used for pre–move house hunting at the new headquarters location, reimbursable after the report date.

(2) As described in 599.715.1, reimbursement for up to $200 of receipted expenses for installation, connection, or assembly of appliances, antennas or utilities that are related to the establishment of the new household. Deposits are not reimbursable.

(d) Advance approval of the Appointing Power and the Department of Finance is required for any reimbursement or combination of reimbursements under this rule that exceeds $1,000. Claims for reimbursement of relocation expenses under this rule must be submitted no later than 6 months from the reporting date. No reimbursement will be issued prior to the employee reporting to the new headquarters.

(e) If an employee whose travel and moving expenses have been so paid does not continue his/her employment with the State department for a period of two year (unless the discontinuance of his/her employment was the result of death, prolonged illness, disability, unacceptable assessment of the employee by that state department, or similar eventualities beyond the control of the employee as determined by the appointing power), he/she repay the following percentage of the amount received as reimbursement for such travel and moving expenses:

100 percent if employed less than 6 months.
75 percent if employed 6 months but less than 12 months.
50 percent if employed 12 months but less than 18 months.
25 percent if employed 18 months but less than 2 years.

HISTORY

1. New section filed 5–3–96; operative 6–1–96. Submitted to OAL for printing only pursuant to Government Code section 3539.5 (Register 96, No. 18).
2. Amendment of subsections (b) and (d) filed 10–1–2001; operative 10–1–2001. Submitted to OAL for printing only pursuant to Government Code section 3539.5 (Register 2001, No. 46).

§ 599.723.2. Relocation of New Hire—International Trade Office Director—Excluded.

Reimbursement for relocation expenses for any new hire is at the discretion of the appointing authority. Other approvals may be required as noted. Application of this rule precludes application of any part of rule 599.723.1.

(a) Reimbursement may be allowed for all or part of the travel and moving expenses of persons who change their place of residence to accept employment with the state in an appointment to the position of International Trade Office Director at a foreign location under the following conditions:

(1) Appointee must be changing the place of residence in order to accept employment with the state, and

(2) Appointment is to be a position that is headquartered in a foreign country and more than 75 miles from the appointee's primary residence, and

(3) The appointee is new to State employment or is being re–appointed to State employment after a permanent separation.

(b) Appointees who meet the criteria in (a) may be approved to receive the following reimbursement of relocation expenses

(1) Reimbursement for the expenses for the movement and storage of household goods in accordance with 599.718.1, 599.719 and 599.724.1 to a maximum of $10,000.

(2) Reimbursement for one coach airfare to the new headquarters location for the appointee only

(c) With advance approval from the Director, Department of Personnel Administration, an appointee who meets the criteria in (a) may, at the discretion of the appointing power be reimbursed for relocation expenses, in addition to those in (b)(1) and (2) above, for all or part of the following:

(1) Reimbursement for a maximum of 90 days of actual expense for temporary lodging and meals at the new headquarters location, limited to the conditions, and receipt requirements applicable to state employee travel reimbursements as set forth in 599.619(a), not to exceed the lodging, meal and incidental rates as set forth by the U.S. Department of State Section 925, Maximum Travel Per Diem Allowances for foreign Areas and Federal Travel Regulation Chapter 301, Appendix B, and as noted below. Reimbursement rates will be as follows:

A. For the first 30 days, 100% of the employee's actual meal and lodging expenses; Up to 14 of the 30 days may be used for pre–move house hunting at the new headquarters location, reimbursable after the report date.

B. If permanent housing has not been acquired within 30 days, reimbursement for an additional 30 days may be granted at 65% of actual expenses for meals and lodging.

C. If permanent housing has not been acquired within 60 days, an additional 30 days may be granted at 55% of the actual expenses for meals and lodging. Reimbursement for temporary lodging will be terminated on the 91st day after arrival at the new headquarters or on the date permanent housing is acquired, whichever is first.

(2) Reimbursement for up to $200 of receipted miscellaneous expenses at the new location for installation, connection or assembly of appliances, antennas or utilities that are related to the establishment of the new household. Deposits are not reimburseable.

(d) Advance approval of the appointing power and the Department of Finance is required on any reimbursement or combination of reimbursements under (b) and or (c) above which exceed a total of $10,000. Claims for reimbursement of appointment relocation expenses under this rule must be submitted no later than 6 months from the report date. No reimbursement will be issued prior to the appointee reporting to the new headquarters, or for expenses not approved, or not incurred, or for non–substantiated expenses, or for expenses provided or reimbursed in another way.

(e) If an appointee whose travel and moving expenses have been so paid does not continue his/her employment with that State department for a period of two years (unless the discontinuance of his/her employment was the result of death, prolonged illness, disability, change of administration, unacceptable assessment of the appointee by that state department, or similar eventualities beyond the control of the appointee as determined by the appointing power), he/she shall repay the following percentage of the amount received as reimbursement for such travel and moving expenses:

100% if employed less than 6 months,

75% if employed 6 months but less than 12 months,

50% if employed 12 months but less than 18 months,

25% if employed 18 months but less than 2 years.

(f) Upon completion of two years of satisfactory service in the position of International Trade Office Director, and immediately prior to a no fault termination of appointment or termination as a result of a change in administration, the appointee shall, upon approval of the appointing power, receive a one–time repatriation differential as follows:

(1) Repatriation Differential payment will be equal to the total of the amounts reimbursed, upon appointment, for the movement of household goods and the one one–way coach air fare as provided in (b)(1) and (2) above to a maximum of $5,000.

(2) Should the appointment be terminated by the state before two years as a result of a change of administration, the repatriation differential shall be approved up to the amount in (f)(1) above.

(3) No other or additional repatriation relocation differential or reimbursement will be made.

(g) Items of expense not specifically provided for in this rule shall not be reimbursed.

HISTORY

1. New section filed 10–31–2002; operative 11–1–2002. Submitted to OAL for printing only pursuant to Government Code section 3539.5 (Register 2002, No. 51).

§ 599.724. Payment of Claims for Moving and Relocation Expenses.

(a) The Department of Personnel Administration shall be responsible for prescribing any specific procedures necessary for effective and economical operation of this article. Claims shall be made on forms prescribed by the Department of General Services scheduled in the normal manner and submitted through regular channels to the State Controller for payment. All claims must be substantiated by invoices or other evidence for each item claimed.

(b) Agencies may contract directly with the carrier for movement of household effects of officers and employees at state expense, subject to the same allowances and restrictions as if the shipment was arranged by the officer or employee and reimbursed by the State.

(c) If the change in residence results in the salary of the officer or employee being paid by a different appointing power, all allowable moving and relocation expenses shall be paid by the new appointing power except where the old appointing power agrees to pay all or part of the expenses allowable under this Article.

(d) Each department shall be responsible for insuring that upon notice to the employee of an impending move, a copy of these rules shall be given to the officer or employee.

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19820, Government Code. Reference: Sections 19841 and 19842, Government Code.

§ 599.724.1. Payment of Claims for Moving and Relocation Expenses—Excluded Employees.

(a) The Department of Personnel Administration shall be responsible for prescribing any specific procedures necessary for effective and economical operation of this article. Claims shall be made on authorized forms, scheduled in the normal manner and submitted through regular channels to the State Controller for payment. All claims must be substantiated by invoices, receipts or other evidence for each item claimed.

(b) Agencies may contract directly with the carrier for movement of household effects of officers and employees at state expense, subject to the same restrictions as if the shipment were arranged by the officer or employee and reimbursed by the State.

(c) If the change in residence results in the salary of the officer or employee being paid by a different appointing power, all allowable moving and relocation expenses shall be paid by the new appointing power except where the old appointing power agrees to pay all or part of the expenses allowable under this Article.

(d) Each department shall be responsible for insuring that upon notice to the employee of an impending move, a copy of these rules shall be given to the officer or employee.

(e) When exceptions have been granted by an appointing authority, the written justification of those exceptions shall be maintained with the applicable claims.

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19820, Government Code. Reference: Sections 19841 and 19842, Government Code.

HISTORY

1. New section filed 12–27–95; operative 1–1–96. Submitted to OAL for printing only pursuant to Government Code section 3539.5 (Register 95, No. 52).

Article 8. Miscellaneous Reimbursement

§ 599.725. Stolen Personal Property.

When tools, equipment an employee is required to use in the performance of his/her assigned work is stolen, the employee's department may reimburse him/her for his/her loss or provide him/her with an exact duplicate, provided that:

(a) The item is required in the employee's work.

(b) The loss occurred at the work site, the work base, or enroute between the two locations.

(c) The loss was not caused by carelessness or negligence on the part of the employee.

Employees required to use their personal tools or equipment as a condition of employment shall provide their employing unit with an inventory of all personal property used on the job.

Personal property stolen from a work site or base shall be reported to the local police having jurisdiction over the area in which the theft occurs. A copy of the police report of the theft shall accompany the claim for reimbursement.

The employee's department shall verify the value of the property by original records, current price lists or other appropriate methods. Claims

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for replacement value of $500 and above require prior approval by the Department of Personnel Administration.

The choice of reimbursement or replacement rests with the employee's department, but the employee's preference must be considered before a decision is made.

NOTE: Authority cited: Section 19815.4(d) and 19816, Government Code. Reference: Section 19850.6, Government Code.

HISTORY

1. New Article 8 (Sections 599.725–599.734, not consecutive) including redesignation of Section 599.733 to Article 8 filed 9–6–83; effective thirtieth day thereafter (Register 83, No. 37). For prior history of Section 599.733, see Registers 83, No. 17; and 82, No. 42.

CROSS REFERENCE: See Title 2, Chapter 1, Sections 895–897.6.

§ 599.726. Clothing Allowances.

It is the purpose of this section to provide for an allowance to state employees for the replacement of distinctive uniforms. Each concerned state department is charged with the responsibility of annually reviewing uniform requirements and submitting recommendation to the Department of Personnel Administration.

NOTE: Authority cited: Sections 19815.4(d) and 19816, Government Code. Reference: Sections 19850, 19850.1, 19850.2 and 19850.3, Government Code.

§ 599.727. Definitions.

For the purposes of this Article, the following definitions will apply.

(a) "Uniform" means outer garments, excluding shoes, which are required to be worn exclusively while carrying out the duties and responsibilities of the position and which are different from the design or fashion of the general population. This definition includes items that serve to identify the person, agency, functions performed, rank or time in service.

(b) "Part–time" employees are those employed in positions which are less than full–time.

(c) "Replacement allowance" means the amount established by the Department of Personnel Administration as the cost of replacing uniform components following the equivalent of one year's service in a given uniform classification.

NOTE: Authority cited: Sections 19815.4(d) and 19816, Government Code. Reference: Sections 19850, 19850.1 and 19850.3, Government Code.

§ 599.728. Requirements.

The following requirements must be met in order for an employee to qualify to receive the uniform allowance:

(a) The uniform is clearly necessary for ready visual identification by the public for law enforcement, public safety, or other closely related purposes; and

(b) The employee must be required by his/her appointing power to wear the uniform for the performance of his/her duties; and

(c) The uniform is authorized for wear only in an official capacity.

NOTE: Authority cited: Sections 19815.4(d) and 19816, Government Code. Reference: Sections 19850.2, Government Code.

§ 599.729. Annual Review of Requirements.

On an annual basis, all concerned departments will review uniform requirements using Government Code Sections 19850 and 19850.2 as guidelines. The review will cover, but not necessarily be limited to, justification, need, new fabrics, new designs, outdated requirements, new requirements, up–to–date costs, and average life of articles. All recommendations will be forwarded to the Department of Personnel Administration no later than May 1 each year.

NOTE: Authority cited: Sections 19815.4(d) and 19816, Government Code. Reference: Sections 19850, 19850.2 and 19850.3, Government Code.

§ 599.730. Employee Eligibility.

State employees will be responsible for the purchase of uniforms as are required as a condition of employment. Employees become eligible for the uniform replacement allowance upon completion of the equivalent of one full year (including any probationary period) in the same uniform classification for which the allowance is claimed. Employees who are separated from state service or who are transferred to a classification which does not require a uniform will not be required to repay any portion of the allowance received. Employees transferred to a different uniform classification may claim the allowance applicable to the new classification only when they have completed the equivalent of one full year in such new classification.

NOTE: Authority cited: Sections 19815.4(d) and 19816, Government Code. Reference: Sections 19850.1, 19850.2 and 19850.3, Government Code.

§ 599.731. Annual Uniform Replacement Allowance—Represented Employees.

A represented employee is defined in Section 599.621.

Employees in the following job classifications will be responsible for the purchase of uniforms required as a condition of employment and receive the indicated amount for the replacement of uniforms. Departments should note that in some cases not all employees in particular classifications are required to wear uniforms. Departments will ensure that these employees are not included in the uniform allowance. All figures are for an employee's uniform complement. A uniform complement being an entire uniform from full dress to, and including, work clothes (footwear excluded).

(a) California Conservation Corps	
(1) Conservationist uniform	204.00
(b) California Museum of Science and Industry	
(1) Watchman, Guard and Security Officer uniform	344.00
(c) Department of Corrections	
(1) Correctional Officer uniform	300.00
(d) Department of Developmental Services	
(1) Firefighter uniform	350.00
(2) Hospital Peace Officer uniform	350.00
(e) Department of Education	
(1) California Maritime Academy Officer and Instructor uniform	244.00
(f) Department of Fish and Game	
(1) Warden uniform	350.00
(2) Fish and Wildlife Field uniform	169.00
(3) Conservation Aide uniform	250.00
(g) Department of Food and Agriculture	
(1) Agricultural Inspector uniform	250.00
(2) Quality Control Inspector uniform	175.00
(h) Department of Forestry	
(1) Forestry uniform	380.00
(2) Firefighter uniform	380.00
(i) Department of General Services	
(1) State Police Officer and State Security Officer uniform	350.00
(2) State Security Guard uniform	126.00
(j) Department of Health Services	
(1) Security Guard uniform	207.00
(k) California Highway Patrol	
(1) State Traffic Officer uniform	350.00
(l) Department of Justice	
(1) Security Officer uniform	262.00
(m) Department of Mental Health	
(1) Firefighter uniform	350.00
(2) Hospital Peace Officer uniform	350.00
(n) Military Department	
(1) Firefighter and Guard uniform	291.00
(o) Department of Parks and Recreation	
(1) State Park Ranger uniform	350.00
(2) Maintenance Worker uniform	173.00
(3) Guide uniform (Hearst San Simeon State Historical Monument)	206.00
(4) Lifeguard uniform	263.00
(5) State Fair Police uniform	300.00
Security Guard uniform	200.00
(6) Clerical Workers uniform (Bargaining Unit 4, San Simeon)	165.00
(p) Department of Transportation	
(1) Toll Collector uniform	250.00
(q) Department of Veterans Affairs	
(1) Security Officer uniform	320.00
(r) Department of Water Resources	
(1) Guide uniform	166.00

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19850.3, Government Code. Reference: Section 19850.1, Government Code.

HISTORY

1. New section filed 2–9–84 (corrected copy refiled 2–27–84); effective thirtieth day thereafter (Register 84, No. 8).
2. Editorial correction of HISTORY NOTES printed in error in Register 84, Nos. 8 and 12 (Register 84, No. 15).

§ 599.732. Part–Time Uniform Allowance—Represented Employees.

A represented employee is defined in Section 599.621.

Full–time represented employees in an established uniform classification who are required to wear a uniform on less than a full–time basis will annually receive $150 or the amount authorized for that uniform classification, or the amount defined in a Memorandum of Understanding for that Bargaining Unit, whichever is less.

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19850.3, Government Code. Reference: Section 19850.1, Government Code.

HISTORY

1. New section filed 2–9–84 (corrected copy refiled 2–27–84); effective thirtieth day thereafter (Register 84, No. 8).
2. Editorial correction of HISTORY NOTES printed in error in Register 84, Nos. 8 and 12 (Register 84, No. 15).

§ 599.733. Annual Uniform Replacement Allowance—Non–Represented Employees.

A non–represented employee is defined in Section 599.619.

Non–represented employees in job classifications which require the purchase and regular, continuing wear of uniforms as a condition of employment will receive an annual uniform replacement allowance consistent with the allowance received by subordinate, represented employees in related classifications. The amount of such allowance shall be determined annually by the Director of the Department of Personnel Administration. Non–represented employees in an established uniform classification who are not required to wear a uniform on a regular, continuing basis will receive an amount determined annually by the Director of the Department of Personnel Administration. Such amount shall not exceed the full amount for that uniform classification.

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19850.3, Government Code. Reference: Section 19850.1, Government Code.

HISTORY

1. Redesignation of Section 599.733 to Article 8 filed 9–6–83; effective thirtieth day thereafter (Register 83, No. 37). For prior history, see Registers 83, No. 17; and 82, No. 42.
2. Editorial correction of second paragraph (Register 95, No. 40).

§ 599.734. Payment Date and Procedures.

Payment of uniform replacement allowances will be effective on the uniform allowance anniversary date for those eligible employees who have such date already established. For all other eligible employees, the payment will be effective on the date they complete the equivalent of one year's service in the same uniform classification.

Uniform replacement allowance claims shall be submitted on forms, and in accordance with procedures, approved by the State Controller. The departmental personnel officer or chief administrative officer will certify that all employees shown on the claim have served the required time for eligibility for the allowance payments.

NOTE: Authority cited: Sections 19815.4(d) and 19816, Government Code. Reference: Sections 19850.1, 19850.2 and 19850.3, Government Code.

HISTORY

1. Editorial correction of second paragraph (Register 95, No. 40).

§ 599.735. (Reserved)

Article 9. Vacations

§ 599.736. Records.

The appointing power shall keep proper records and schedules of vacations accumulated and granted and shall make such reports thereof to the Director of the Department of Personnel Administration as may from time to time be required.

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19856, Government Code. Reference: Sections 19856.1, 19857, 19858.1 and 19858.2, Government Code.

HISTORY

1. New Article 9 (Sections 599.736–599.743), including redesignation of Section 599.738 to Article 9, filed 9–6–83; effective thirtieth day thereafter (Register 83, No. 37). For prior history of Section 599.738, see Registers 83, No. 17; and 82, No. 42.

CROSS REFERENCE: See Title 2, Division 1, Chapter 1, Subchapter 1, Sections 385–387.

§ 599.737. Accumulation—Represented Employees.

If an employee is not permitted to take all of the vacation to which he or she is entitled in a calendar year, the employee may accumulate the unused portion, provided that on January 1st of a calendar year, the employee shall not have more than 30 vacation days for 10 or less years of service or 40 vacation days for more than 10 years of service.

The appointing power may permit an employee to carry over more vacation credits than the prescribed maximum when the employee is prevented from taking vacation because the employee is (1) required to work as a result of fire, flood or other emergency, (2) assigned work of priority or critical nature over an extended period of time, (3) absent on full salary for compensable injury, or (4) prevented by department regulations from taking vacation until December and is then unable to take vacation because of sick leave usage. The carry–over of vacation credits in successive years may only be approved by the appointing power in extenuating circumstances.

When verification of prior state service requires revisions in vacation credit, the employee's current accumulation shall be adjusted. Additional credit exceeding the maximum carry–over limitation shall be used within one year following the qualifying monthly pay period in which credited.

An employee separated from service without fault shall be paid for all accumulated vacation credit. Accumulation of vacation credit shall continue through the last working day for which the employee is entitled to pay or through the date to which lump–sum payment is projected as required by Section 19839 of the Government Code. If the employee has sufficient paid working days to qualify the monthly pay period, vacation with pay shall be given for that monthly pay period.

An employee separated from service through fault shall accumulate vacation credit only through the date of separation. If the employee has sufficient paid working days to qualify the monthly pay period, vacation with pay shall be given for that monthly pay period.

NOTE: Authority cited: Sections 19815.4(d), 19856 and 19857, Government Code. Reference: Sections 19839 and 19857, Government Code.

§ 599.737.5. Voluntary Personal Leave Program—Excluded Employees.

The following Voluntary Personal Leave Program (VPLP) shall be effective for all excluded employees [as defined in Section 3527(b) of the Government Code] who have permanent status and work full time. As specified below, the VPLP allows eligible employees to receive additional leave time in return for a corresponding reduction in pay.

(a) Each department shall decide whether it will offer the VPLP. Participating departments will notify employees of any program conditions and procedures that they may establish (e.g., eligibility criteria, maximum carryover credits, operational limitations) for program participation. Employee participation in the program shall be on a voluntary basis, subject to their departments' approval.

(b) Except for (k) below, only permanent full time employees are eligible to participate in the VPLP. Interested employees may only request either one day (8 hours) or two days (16 hours) Personal Leave per month with an equal reduction in pay. Approval or denial of the request shall be at the general discretion of the department and may vary within a department. A department may only approve either one day (8 hours) or two days (16 hours) personal leave. Salary ranges and rates shall not be affected because of VPLP participation.

(c) Participating employees shall be credited with eight (8) or sixteen (16) hours of Personal Leave on the first day of the monthly pay period following each month of participation in the VPLP.

(d) Once approved, employees must remain in the Program for twelve (12) months unless a department establishes a lesser time period. Once approved for the VPLP, an employee agrees to remain in the program for that time period. In the case of a financial hardship, an employee's request to cancel participation may be approved by a department on a case–by–case basis. The State reserves the right to cancel the program on a departmental, subdivisional, or individual basis at any time with thirty (30) days notice to the employee.

(e) Personal Leave shall be requested and used by the employee in the same manner as vacation or annual leave. Requests to use Personal Leave must be submitted in accordance with departmental policies on vacation or annual leave. Employees may not be required to use Personal Leave credits.

(f) At the discretion of the State, all or a portion of unused VPLP credits may be cashed out at the employee's salary rate at the time the VPLP payment is made. The application of this cash out provision may differ from department to department and from employee to employee. Upon termination from State employment, the employee shall be paid for unused Personal Leave credits in the same manner as vacation or annual leave. Cash out or lump sum payment for any Personal Leave credits shall not be considered as "compensation" for purposes of retirement.

(g) Participating employees shall be entitled to the same level of State employer contributions for health, vision, dental, flex-elect cash option, and enhanced survivors benefits he or she would have received had they not participated in the VPLP.

(h) The VPLP shall not cause a break in State service, a reduction in the employee's accumulation of service credit for the purposes of seniority and retirement, leave accumulation, or a merit salary adjustment.

(i) The VPLP shall neither affect the employee's final compensation used in calculating State retirement benefits nor reduce the level of state death or disability benefits the employee would otherwise receive or be entitled to receive nor shall it affect the employee's ability to supplement those benefits with paid leave.

(j) The VPLP shall be administered consistent with the existing payroll system and the policies and practices of the State Controller's Office.

(k) Employees on EIDL, NDI, IDL, or Worker's Compensation for the entire monthly pay period shall be excluded from the VPLP.

(*l*) Continued participation in the program when an employee transfers to another department shall be at the discretion of the new department.

(m) If any dispute arises about this VPLP, an employee may file a grievance under DPA Rule 599.859.

HISTORY

1. New section filed 5-4-94; operative 5-4-94. Submitted to OAL for printing only pursuant to Government Code section 3539.5 (Register 94, No. 18).

§ 599.738. Accumulation—Excluded Employees.

An excluded employee is defined in Section 599.615(b).

(a) The excluded employee may accumulate the unused portion of vacation credit, provided that on January 1st of a calendar year, the excluded employee shall not have more than 80 vacation days.

(b) The appointing power may permit an excluded employee to carry over more vacation credits than the prescribed maximum when the excluded employee is prevented from taking vacation because the excluded employee is: (1) required to work as a result of fire, flood or other emergency, (2) assigned work of priority or critical nature over an extended period, (3) absent on full salary for compensable injury, or (4) prevented by department regulations from taking vacation until December and is then unable to take vacation because of sick leave usage. The carry-over of vacation credits in successive years may only be approved by the appointing power in extenuating circumstances.

(c) When verification of prior state service requires revisions in vacation credits the excluded employee's current accumulation shall be adjusted. Additional credit exceeding the maximum carry-over shall be used within one year following the qualifying monthly pay period in which credited.

(d) An excluded employee separated from service without fault, shall be paid for all accumulated vacation credit. Accumulation of vacation credit shall continue through the last working day for which the excluded employee is entitled to pay or through the date to which lump-sum payment is projected as required by section 19839 of the Government Code. If the excluded employee has sufficient paid working days to qualify the monthly pay period, vacation with pay shall be given for that monthly pay period.

(e) An excluded employee separated from service through fault shall accumulate vacation credit only through the date of separation. If the excluded employee has sufficient paid working days to qualify the monthly pay period, vacation pay shall be given for that monthly pay period.

NOTE: Authority cited: Sections 3539.5, 19815.4(d), 19816, 19856 and 19857, Government Code. Reference: Section 19839, Government Code.

HISTORY

1. Redesignation of section 599.738 to Article 9 filed 9-6-83; effective thirtieth day thereafter (Register 83, No. 37). For prior history, see Registers 83, No. 17; and 82, No. 42.
2. Change without regulatory effect amending section heading, section, and NOTE filed 6-29-92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 27).
3. Amendment of subsection (a) filed 11-30-99; operative 11-30-99. Submitted to OAL for printing only pursuant to Government Code section 3539.5 (Register 99, No. 49).

§ 599.739. Credit for Full-Time Employment.

On the first day of the monthly pay period following completion of six monthly pay periods of continuous service as defined in Section 588.608, each full-time employee in the state civil service shall be allowed five days of credit for vacation with pay. Thereafter, for each additional qualifying monthly pay period as defined in Section 599.608 the employee shall be allowed credit for vacation with pay on the first day of the following monthly pay period as follows:

Length of Service	*Vacation Allowance*
7 months through 36 months (3 years)	5/6 day per month
37 months through 120 months (10 years)	1 1/4 days per month
121 months through 180 months (15 years)	1 5/12 days per month
181 months through 288 months (24 years)	1 7/12 days per month
289 months and over	1 2/3 days per month

When computing months of total state service to determine a change in the monthly credit for vacation with pay, only qualifying monthly pay periods of service before and after breaks in service shall be counted. Portions of nonqualifying monthly pay periods of service shall not be counted nor accumulated.

An employee who returns to state service after an absence caused by a temporary or permanent separation of less than six months, or an absence of six months or longer caused by a temporary separation other than temporary military leave shall commence to receive vacation credit on the first day of the monthly pay period following completion of one qualifying monthly pay period of service after return. Credit shall be allowed in accordance with the schedule of vacation allowance as determined by total service before and after the absence. The period of military leave shall be counted as state service toward additional vacation allowance for those employees who exercise reinstatement under Government Code Section 19780, 19782 or 19783.

An employee who returns to state service after an absence of six months or longer caused by a permanent separation shall be allowed vacation credit on the first day of the monthly pay period following completion of six monthly pay periods of continuous service as defined in Section 599.608 after return. The credit received for these six monthly pay periods and for each additional qualifying monthly pay period of service thereafter shall be in accordance with the schedule of vacation allowance as determined by the total service before and after the absence.

NOTE: Authority cited: Sections 19143, 19815.4(d), 19816, 19856, 19857 and 19858.2, Government Code. Reference: Sections 19856.1, 19858.1, 19780, 19782, 19783 and 19996, Government Code.

§ 599.739.1. Credit for Full-Time Employment—Excluded Employees.

An excluded employee is defined in section 599.615(b).

(a) On the first day of the monthly pay period following completion of six monthly pay periods of continuous service as defined in section 588.608, each full-time excluded employee in the state civil service shall be allowed 42 hours of credit for vacation with pay. Thereafter, for each additional qualifying monthly pay period as defined in section 599.608, the employee shall be allowed credit for vacation with pay on the first day of the following monthly pay period as follows:

Length of Service	*Vacation Allowance*
7 months through 36 months (3 years)	7/8 days per month (7 hours)
37 months through 120 months (10 years)	1 3/8 days per month (11 hours)
121 months through 180 months (15 years)	1 5/8 days per month (13 hours)
181 months through 240 months (20 years)	1 3/4 days per month (14 hours)
241 months through 300 months (25 years)	1 7/8 days per month (15 hours)
301 months and over	2 days per month (16 hours)

(b) When computing months of total state service to determine a change in the monthly credit for vacation with pay, only qualifying monthly pay periods of service before and after breaks in service shall be counted. Portions of nonqualifying monthly pay periods of service shall not be counted nor accumulated.

(c) An excluded employee who returns to state service after an absence caused by a temporary or permanent separation of less than six months, or an absence of six months or longer caused by a temporary separation other than temporary military leave shall commence to receive vacation credit on the first day of the monthly pay period following completion of one qualifying monthly pay period of service after return. Credit shall be allowed in accordance with the schedule of vacation allowance as determined by total service before and after the absence. The period of military leave shall be counted as state service toward additional vacation allowance for those employees who exercise reinstatement under section 19780, 19782 or 19783 of the Government Code.

(d) An excluded employee who returns to state service after an absence of six months or longer caused by a permanent separation shall be allowed vacation credit on the first day of the monthly pay period following completion of six monthly pay periods of continuous service as defined in section 599.608 after return. The credit received for these six monthly pay periods and for each additional qualifying monthly pay period of service thereafter shall be in accordance with the schedule of vacation allowance as determined by the total service before and after the absence.

NOTE: Authority cited: Sections 19815.4(d), 19816, 19856, 19857 and 19858.2, Government Code. Reference: Sections 19856.1, 19858.1, 19780, 19782, 19783 and 19996, Government Code.

HISTORY

1. New section filed 8–31–90 by the Department of Personnel Administration with the Secretary of State; operative 8–31–90 pursuant to Government Code section 3539.5. Submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 3).
2. Change without regulatory effect amending section heading, text and HISTORY 1. and designating subsections (a)–(d) filed 7–21–92; operative 7–21–92 pursuant to title 1, section 100, California Code of Regulations (Register 92, No. 30).

§ 599.739.2. Accrual of Vacation Credit upon Movement from a Represented to an Excluded Position.

(a) Notwithstanding the provisions of Government Code section 19858.1, when the movement of an employee from a represented to a nonpresented position would result in a reduction of the employee's rate of vacation credit accrual, the employee shall continue to receive credit for vacation at his/her former rate, until the employee qualifies for an accrual rate under Government Code section 19858.1(c) that equals or exceeds that rate.

(b) For the purpose of this section, a represented position is one that is within a bargaining unit established under section 3521 of the California Government Code (Ralph C. Dills Act).

NOTE: Authority cited: Sections 19815.4(d), 19816, 19856, 19857 and 19858.2, Government Code. Reference: Section 19858.1(c), Government Code.

HISTORY

1. New section filed 8–31–90 by the Department of Personnel Administration with the Secretary of State; operative 8–31–90 pursuant to Government Code section 3539.5. Submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 3).
2. Change without regulatory effect amending section heading and HISTORY 1., and designating subsections (a) and (b) filed 7–21–92; operative 7–21–92 pursuant to title 1, section 100, California Code of Regulations (Register 92, No. 30).

§ 599.740. Credit for Less Than Full–Time Employment.

(a) Intermittent Employees. On the first day of the monthly pay period following completion of 960 hours or 120 days of paid employment, each intermittent employee in the state civil service shall be allowed six qualifying monthly pay periods credit for vacation with pay in accordance with the schedule in Section 599.739. Thereafter, on the first day of the monthly pay period following additional service of 160 hours or 20 days, the employee shall be allowed days of vacation credit in accordance with the schedule in Section 599.739. The hours or days worked in excess of 160 hours or 20 days in a monthly period shall not be counted or accumulated.

(b) Part–Time Employees. On the first day of the monthly pay period following completion of six monthly pay periods of continuous service as defined in Sectio 599.608 each part–time employee in the state civil service shall be allowed on a pro rata basis the fractional part of six qualifying monthly pay periods credit for vacation with pay in accordance with the schedule in Section 599.739 except that fractions of hours which do not equal one–third hour shall be adjusted to the next higher one–third hour. Thereafter, on the first day of the monthly pay period following accumulated service equal to one qualifying monthly pay period of full–time service, the employees shall be allowed vacation credit on a pro rata basis which corresponds to the employee's time base in accordance with the schedule in Section 599.739.

c) Computing Service. When computing months of total state service to determine a change in the days of credit for vacation with pay, part–time service shall be accumulated until it is equal to one month of full–time service (e.g., 1/2 time—2 months equal one month; 1/8 time—8 months equal one month) and intermittent service shall be converted with 160 hours or 20 days equal to one qualifying monthly pay period but any hours or days worked in excess of 160 hours or 20 days in a monthly pay period shall not be accumulated. When any employee changes time base to other than full–time, service under each time base shall be accumulated until it equals one month of full–time service. When an employee has a break in service or changes to full time, any time worked which does not equal one month of full–time service shall not be accumulated or counted.

To determine when an employee qualifies for vacation credits after a break in service as provided in Section 599.739 the one qualifying monthly pay period and six qualifying monthly pay periods shall be computed using the same method and approach set forth in subsections (a) and (b) of this rule.

(d) Multiple Positions. Under this rule:

(1) An employee holding a position in addition to other full–time employment with the state shall not receive credit for vacation with pay for service in the additional position.

(2) Where an employee holds two or more less than full–time positions, the time worked in each position shall be combined for purposes of computing credits for vacation with pay but such credits shall not exceed full–time employment credit.

NOTE: Authority cited: Sections 19815.4(d), 19816, 19856, 19857 and 19858.2, Government Code. Reference: Section 19856.1, Government Code.

HISTORY

1. Editorial correction of subsection (c) (Register 95, No. 40).

§ 599.741. Transfer of Vacation.

When an employee leaves the employment of one state agency and enters the employment of another state agency, the employee's accumulated vacation credit becomes a charge against the latter state agency.

NOTE: Authority cited: Sections 19815.4(d), 19816, 19856, 19857 and 19858.2, Government Code. Reference: Sections: 19856, 19856.1 and 19858.1, Government Code.

HISTORY

1. Editorial correction of Authority cite (Register 95, No. 5).

§ 599.742. Right to Vacation.

In the event the appointment power does not provide vacation for an employee sufficient to reduce accumulated vacation to the amount permitted by Sections 599.737 and 599.738 as of January 1, the employee may take, as a matter of right, immediately preceding January 1 the number of days of accumulated vacation required to reduce such accumulation to the amount permitted by that rule. The balance of accumulated vacation shall remain to the employee's credit.

NOTE: Authority cited: Sections 19815.4(d), 19816, 19856, 19857 and 19858.2, Government Code. Reference: Section 19858.1, Government Code.

§ 599.742.1. Right to Vacation—Nonrepresented Employees.

It is the intent of the State to allow employees to utilize credited vacation or annual leave each year for relaxation and recreation. It is the employee's responsibility to plan vacations well in advance to minimize conflicts with the operational needs of the department. It is the appointing power's responsibility to provide reasonable opportunity for all employees to take an annual vacation commensurate with their annual accrual rate of vacation or annual leave.

If it appears an employee designated confidential, excluded, supervisory, or managerial under the Ralph C. Dills Act will have a vacation or annual leave balance that will be above the maximum amount permitted by Sections 599.737 and 599.738 as of January 1 of each year the appointing power shall require the supervisor to notify and meet with each employee so affected, by the preceding July 1, to allow the employee to plan time off, consistent with operational needs, sufficient to reduce their balance to the amount permitted by the applicable rule prior to January 1.

The employee shall also be notified by July 1 that if the employee fails to take off the required number of hours by January 1 for reasons other than those listed in Sections 599.737 and 599.738 the appointing power shall require the employee to take off the excess hours over the maximum permitted by the applicable rule at the convenience of the department during the following calendar year.

NOTE: Authority cited: Sections 19815.4(d), 19816, 19856, 19857, 19858.2, 19858.3 and 3517.8, Government Code. Reference: Section 19858.1 and 19858.4, Government Code.

HISTORY

1. New section filed by Department of Personnel Administration with the Secretary of State on 8–31–88; operative 8–31–88. Submitted to OAL for printing only pursuant to Government Code Section 11343.8 (Register 88, No. 39).

§ 599.743. Computing State Service to Initiate Graduated Vacation Schedule.

For the purpose of initiating the additional vacation allowance for an employee in state civil service on December 31, 1963, or whose lump sum payment for vacation extends through February 1, 1964, the months of total state service shall be computed irrespective of the duration of any break in the continuity of service. The period of military leave shall be counted as state service toward additional vacation allowance for those employees who exercise reinstatement under Section 19390 or 19406. For full–time employment only complete months of service before and after breaks in service shall be counted and portions of months of service shall not be counted nor accumulated. To determine a month of service for less than full–time employment the fractional part–time shall be accumulated until it is equal to one month of service. For service compensated on an hourly basis a month of service is 160 hours of paid employment. Time or hours worked in excess of full time or 160 hours in any calendar month shall not be counted nor accumulated. When an employee working less than full time has a break in service or changes to full–time, any time worked which does not equal one month of service shall not be accumulated and counted.

NOTE: Authority cited: Sections 19815.4(d), 19816, 19856, 19857 and 19858.2, Government Code. Reference: Sections 19143 and 19858.1, Government Code.

HISTORY

1. Editorial correction of fourth sentence (Register 95, No. 40).

§ 599.744. Paid Leave Buy–Back—Managerial, Supervisory, Confidential, Excluded, and Related Employees.

(a) Upon the annual determination by the Department of Personnel Administration whether or not a buy–back will be offered, an employee designated managerial by the Department in accordance with the provisions of Government Code sections 3513 (e) and 18801.1; or a nonelected officer of the executive branch of government exempt from civil service designated by the Department as eligible to receive managerial benefits may annually elect to be paid at their regular rate of pay for up to 80 hours of unused leave credit. Unused leave credit for which an employee may be paid shall be in 8–hour increments. For the purposes of buy–back, eligible leave may be a combination of vacation leave, annual leave, personal leave, personal holiday, or holiday credit.

A nonmanagerial employee designated supervisory, confidential, or excluded by the Department in accordance with the provisions of Government Code section 3513(c), 3513(f) and 3513(g); or a nonelected employee of the executive branch of government exempt from civil service may annually elect to be paid at their regular rate of pay for up to 40 hours of unused leave credit.

(b) Under this section, employees may cash out only one time in a fiscal year regardless of department or collective bargaining identification designation (CBID) changes.

(c) The Department shall determine the date of eligibility and conditions for buy–back and the period during which application for buy–back shall be accepted.

NOTE: Authority cited: Sections 3539.5, 19815.4(d), 19849.13, 19856 and 19857, Government Code. Reference: Sections 19856 and 19857, Government Code.

HISTORY

1. New section filed by the Department of Personnel Administration with Secretary of State on 12–7–84; effective upon filing. Submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 85, No. 18).
2. Repealer and new section filed by the Department of Personnel Administration with the Secretary of State on 9–20–85; effective upon filing. Submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 85, No. 41).
3. Amendment filed by the Department of Personnel Administration with the Secretary of State on 11–1–85; effective upon filing. Submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 85, No. 47).
4. Amendment filed by the Department of Personnel Administration with the Secretary of State on 10–25–89; operative 11–1–89. Submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 89, No. 49).
5. Amendment filed by the Department of Personnel Administration with the Secretary of State on 10–22–90; operative 10–31–90. Submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 90, No. 49).
6. Amendment of section filed 8–29–91; operative 8–29–91. Submitted to OAL for printing only pursuant to Government Code section 3539.5 (Register 91, No. 51).
7. Amendment of section heading and section filed 11–30–99; operative 11–1–99. Submitted to OAL for printing only pursuant to Government Code section 3539.5 (Register 2000, No. 2).

§ 599.744.1. Paid Leave Buy–Back—Supervisory, Confidential, Excluded, and Related Employees.

NOTE: Authority cited: Sections 3517.8, 3539.5, 19815.4(d), 19849.13, 19856 and 19857, Government Code. Reference: Sections 19856 and 19857, Government Code.

HISTORY

1. New section filed by the Department of Personnel Administration with the Secretary of State on 10–25–89; operative 11–1–89. Submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 89, No. 49).
2. Amendment filed by the Department of Personnel Administration with the Secretary of State on 6–15–90; operative 7–1–90. Submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 90, No. 35).
3. Amendment of section filed 8–29–91; operative 8–29–91. Submitted to OAL for printing only pursuant to Government Code section 3539.5 (Register 91, No. 51).
4. Repealer filed 11–30–99; operative 11–1–99. Submitted to OAL for printing only pursuant to Government Code section 3539.5 (Register 2000, No. 2).

Article 10. Sick Leave

§ 599.745. Definitions—Represented Employees.

"Sick leave" means the necessary absence from duty of an employee because of:

(a) Illness or injury.

(b) Exposure to contagious disease.

(c) Dental, eye, and other physical or medical examination or treatment by a licensed practitioner.

(d) Required attendance, not to exceed five days in any calendar year, upon the employee's ill or injured mother, father, husband, wife, son, daughter, brother, or sister, or any person residing in the immediate household of the employee except servants, roomers, or roommates.

(e) The five day limit on the use of family sick leave in subsection (d) shall not apply to non-represented employees as defined in Section 599.733 of these regulations.

(f) the death of a person related by blood, by adoption, or by marriage or any person residing in the immediate household of the employee. Each absence shall not exceed five days.

NOTE: Authority cited: Sections 19815.4(d), 19816, 19859 and 19860, Government Code. Reference: Section 19859, Government Code.

HISTORY

1. New Article 10 (Sections 599.746–599.751), including redesignation of Section 599.745 to Article 10, filed 9–6–83; effective thirtieth day thereafter (Register 83, No. 37). For prior history of Section 599.745, see Registers 83, No. 17; and 82, No. 42.

CROSS REFERENCE: See Title 2, Division 1, Chapter 1, Subchapter 1, Sections 401–409.

2. Amendment of section heading filed by Department of Personnel Administration with the Secretary of State on 9–20–85; effective upon filing. Submitted to OAL for printing only pursuant to Government Code Section 11343.8 (Register 85, No. 41).

§ 599.745.1. Definitions—Excluded Employees.

An excluded employee is defined in section 599.615(b).

(a) "Sick leave" means the necessary absence from duty of an excluded employee because of:

(1) Illness or injury.

(2) Exposure to contagious disease.

(3) Dental, eye, and other physical or medical examination or treatment by a licensed practitioner.

(4) Required attendance, upon the excluded employee's ill or injured mother, father, husband, wife, son, daughter, brother, or sister, or any person residing in the immediate household of the excluded employee.

(b) "Absence for sick leave" means the time the excluded employee is absent from work due for a valid sick leave reason and may be for a minimum of thirty minutes.

NOTE: Authority cited: Sections 3539.5, 19815.4(d), 19816, 19859 and 19860, Government Code. Reference: Section 19859, Government Code.

HISTORY

1. New section filed by the Department of Personnel Administration with the Secretary of State on 9–20–85; effective upon filing. Submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 85, No. 41).

2. Amendment filed by the Department of Personnel Administration with the Secretary of State on 11–1–88; operative 11–1–88. Submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 88, No. 52).

3. Change without regulatory effect amending section heading, section, and NOTE filed 6–29–92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 27).

4. Editorial correction of opening sentence (Register 95, No. 21).

§ 599.746. Credit for Full–Time Employment.

On the first day of the monthly pay period following completion of each monthly pay period of continuous service as defined in Section 599.608, each full–time employee in the state civil service shall be allowed one day of credit for sick leave with pay.

NOTE: Authority cited: Sections 19815.4(d) and 19816, Government Code. Reference: Section 19859, Government Code.

§ 599.747. Credit for Less Than Full–Time Employment.

(a) Intermittent Employees. On the first day of the monthly pay period following completion of each period of 160 hours or 20 days of paid employment, each intermittent employee in the state civil service shall be allowed one day of credit for sick leave with pay. The hours or days worked in excess of 160 hours or 20 days in a monthly pay period shall not be counted or accumulated.

(b) Part–time Employees. On the first day of the monthly pay period following completion of each monthly pay period of continuous service as defined in Section 599.608 each part–time employee in the state civil service shall be allowed on a pro rata basis the fractional part of one day of credit for sick leave with pay.

(c) Multiple Positions. Under this rule:

(1) An employee holding a position in addition to other full–time employment with the state shall not receive credit for sick leave with pay for service in the additional position.

(2) Where an employee holds two or more less than full–time positions, the time worked in each position shall be combined for purposes of computing credits for sick leave with pay but such credits shall not exceed full–time employment credit.

NOTE: Authority cited: Sections 19815.4(d), 19816, 19859, 19860 and 19861, Government Code. Reference: Section 19862, Government Code.

§ 599.748. Sick Leave Credit for Prior Service Under Civil Service or Exempt Appointment.

A state employee who earns sick leave credit and is charged for sick leave absences in the same manner as civil service employees, and who reenters state service within six months after separation shall be credited with any unused sick leave held at the time of such separation.

NOTE: Authority cited: Sections 19815.4(d), 19816, 19859, 19860, 19861 and 19862.1, Government Code. Reference: Sections 19143 and 19996, Government Code.

§ 599.749. Evidence of Need for Sick Leave.

The appointing power shall approve sick leave only after having ascertained that the absence was for an authorized reason and may require the employee to submit substantiating evidence including, but not limited to, a physician's certificate. If the appointing power does not consider the evidence adequate, the request for sick leave shall be disapproved.

NOTE: Authority cited: Sections 19815.4(d) and 19816, Government Code. Reference: Section 19859, Government Code.

§ 599.750. Reports.

Sick leave shall be certified by the appointing power upon forms prescribed by the Director of the Department of Personnel Administration.

The appointing power shall maintain complete and accurate sick leave records.

NOTE: Authority cited: Sections 19815.4(d) and 19816, Government Code. Reference: Section 19859, Government Code.

§ 599.751. Appeal.

An employee may appeal to the Department of Personnel Administration for the failure or refusal of the appointing power to approve a request for sick leave.

NOTE: Authority cited: Sections 19815.4(d), 19816, 19859, 19860, 19861 and 19862.1, Government Code. Reference: Section 19862, Government Code.

Article 10.25. Annual Leave Program

§ 599.752. Annual Leave Program.

(a) Pursuant to Government Code section 19858.3, eligible employees may elect to enroll in the Annual Leave Program to receive annual leave credit in lieu of sick leave and vacation benefits. Employees may elect to enroll in the Sick/Vacation Leave Program or the Annual Leave Program at any time except that once an employee voluntarily elects to enroll in either the Annual Leave Program or Sick/Vacation Leave Program, the employee may not elect to enroll in the other program until 24 months has elapsed from date of enrollment.

Current employees who enroll in annual leave shall have accumulated vacation hours converted to annual leave credits on an hour for hour basis and begin accruing annual leave in accordance with the leave accrual schedule specified in subsection (c). Sick leave credits accumulated in accordance with Rule 599.746 shall continue to be available for approved sick leave purposes.

(b) Employees newly appointed to a class with a designation which is excluded from the definition of State employee under section 3513(c) shall be eligible to enroll in the Annual Leave Program or the vacation program irrespective of the date the employee last elected to change from either program.

(c) On the first day following a qualifying monthly pay period, as defined in Rule 599.608, employees identified in part (a), (b), or (c) of Government Code section 19858.3 or subsection (a) above, as it applies to

employees excluded from the definition of State employee under section 3513(c), and appointees of the Governor as designated by the Department of Personnel Administration and not subject to section 599.752.1 shall be allowed credit for annual leave with pay as follows:

Length of Service	*Annual Leave Allowance*
1 month through 120 months (10 yrs)	15 hours per month
121 months through 180 months (15 yrs)	17 hours per month
181 months through 240 months (20 yrs)	18 hours per month
241 months through 300 months (25 yrs)	19 hours per month
301 months and over	20 hours per month

Other participating employees will accrue leave based on the scheduled provided in Government Code section 19858.4.

(d) The employee may accumulate the unused portion of annual leave credit, provided that on January 1st of a calendar year, the employee shall not have more than 80 annual leave days.

Except as provided for in section 599.742.1, exceptions to carry over more than the prescribed maximum will be allowed only when the employee is prevented from taking annual leave because the employee is (1) required to work as a result of fire, flood or other emergency, or (2) absent on full salary for compensable injury. Such exceptions must be approved in advance by the Director of the Department of Personnel Administration.

When verification of prior State service requires revisions in annual leave credits the employee's current accumulation shall be adjusted. Additional credit exceeding the maximum carry–over shall be used within one year following the qualifying monthly pay period in which credited.

(e) Annual leave credits may be used for any approved absence. When annual leave is used for sick leave purposes, the appointing power may require the employee to submit substantiating evidence including, but not limited to, a physician's certificate. If the appointing power does not consider the evidence adequate, the request for the use of annual leave for sick leave may be disapproved. Denials of use of annual leave for sick leave may be appealed to the appointing power. Use of annual leave shall be in 30 minute increments for approved absences.

(f) In the event the appointing power does not approve annual leave for an employee sufficient to reduce accumulated annual leave to the amount permitted by this section as of January 1, the employee may take, as a matter of right, immediately preceding January 1, the number of days of accumulated annual leave required to reduce such accumulation to the amount permitted by that rule.

(g) Except as herein provided, vacation regulations 599.738–599.741 governing separation from State service without fault; credit for part–time and intermittent employment; credit for employees returning to State service after absence by temporary or permanent separation; computing State service for full–time, part–time, intermittent and employees holding multiple positions; and transfers of accumulated credit shall apply to annual leave.

NOTE: Authority cited: Sections 3517.8, 19143, 19815.4(d) and 19816, Government Code. Reference: Sections 19780, 19782, 19783, 19839, 19858.3, 19858.4 and 19996, Government Code.

HISTORY

1. New section filed by the Department of Personnel Administration with the Secretary of State on 12–30–86; effective upon filing. Submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 87, No. 6).
2. Amendment of subsections (a) and (e) filed by the Department of Personnel Administration with the Secretary of State on 11–10–87; operative 11–10–87. Submitted to OAL for printing only pursuant to Government Code Section 11343.8 (Register 87, No. 52).
3. Amendment of subsections (b)–(d) filed by the Department of Personnel Administration with the Secretary of State on 11–1–88; operative 11–1–88. Submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 88, No. 52).
4. Amendment of subsections (b) and (d) filed by the Department of Personnel Administration with the Secretary of State on 12–15–88; operative 1–1–89. Submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 89, No. 4).
5. Amendment of subsection (a) filed by the Department of Personnel Administration with the Secretary of State on 2–22–89; operative on filing. Submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 89, No. 18).
6. Amendment of subsections (a) and (b) filed by the Department of Personnel Administration with the Secretary of State on 12–28–90, effective on filing; operative 1–1–91 pursuant to Department of Personnel Administration. Submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 7).
7. Amendment of subsections (a) and (b) filed 2–7–91 with Secretary of State by Department of Personnel Administration; operative 2–7–91. Submitted to OAL for printing only pursuant to Government Code section 3539.5 (Register 91, No. 17).
8. Amendment of subsection (b) filed 3–7–91 with Secretary of State by Department of Personnel Administration; operative 3–7–91. Submitted to OAL for printing only pursuant to Government Code section 3539.5 (Register 91, No. 17).
9. New subsection (b) and subsection relettering and amendment of subsection (a) and newly–designated subsections (c), (f) and (g) filed 8–10–92 with the Secretary of State by Department of Personnel Administration; operative 8–15–92. Submitted to OAL for printing only pursuant to Government Code section 3539.5 (Register 92, No. 33).
10. Amendment of subsection (e) filed 10–15–93; operative 10–1–93. Submitted to OAL for printing only pursuant to Government Code section 3539.5 (Register 93, No. 42).
11. Amendment of subsections (a)–(b) and (e) filed 11–30–99; operative 11–30–99. Submitted to OAL for printing only pursuant to Government Code section 3539.5 (Register 99, No. 49).

§ 599.752.1. Annual Paid Leave – Board and Commission Members.

(a) Pursuant to Government Code section 19849.16 and effective July 2, 1991, nonelected members of State boards and commissions, whose annual salaries are fixed by law as designated in subsection (g) shall choose and accrue annual leave or vacation and sick credits in accordance with the leave accrual schedules specified in subsection (b). Employees accruing paid leave under vacation or annual leave programs established by Government Code sections 19856 or 19858.3 are not eligible under this section.

(b) On the first day following a qualifying monthly pay period, as defined in Rule 599.608, the employee shall be allowed credit for paid leave with pay as follows:

Length of Service	*Annual Leave Allowance*
1 month through 120 months (10 yrs)	15 hours per month
121 months through 180 months (15 yrs)	17 hours per month
181 months through 240 months (20 yrs)	18 hours per month
241 months through 300 months (25 yrs)	19 hours per month
301 months and over	20 hours per month

Employees choosing annual leave receive a nonindustrial disability benefit as provided in section 599.776.

Length of Service	*Vacation Allowance*
1 month to 3 years	7 hours per month
37 months to 10 years	11 hours per month
121 months to 15 years	13 hours per month
181 months to 20 years	14 hours per month
241 months to 25 years	15 hours per month
301 months and over	16 hours per month

Employees choosing vacation credit in lieu of annual leave shall receive sick leave credit as provided in Government Code section 19859, and a nonindustrial disability benefit as provided in sections 599.777 and 599.778.

(c) Effective July 2, 1991, or upon appointment, whichever is later, eligible employees may be credited in advance with one year's accrual at the appropriate rate. No further credit will be earned during the first twelve months of service. Annual leave or vacation credit advanced may not be used for lump–sum payment or buy back under section 599.752.3. Sick leave credit advanced may not be converted to service credit for retirement purposes.

(d) When computing months of total service to determine the monthly credit for leave with pay, only qualifying monthly pay periods of service before and after breaks in service shall be counted. Portions of nonqualifying monthly pay periods of service shall not be counted or accumulated.

(e) Vacation, annual leave, and sick leave credits previously earned in accordance with applicable Department of Personnel Administration rules shall continue to be available for leave purposes.

(f) Employees subject to this section receive a nonindustrial disability benefit as provided in section 599.776. The selection of either of the paid leave programs by the employee is irrevocable during their term(s) of office under this section.

(g) Eligible members of the following boards and commissions are subject to the provisions of this section: Agricultural Labor Relations Board, Board of Prison Terms, Energy Resources Commission, Fair Political Practices Commission (Chairperson only), Integrated Waste Management Board, Occupational Safety and Health Act Appeals Board, Public Employment Relations Board, Public Utilities Commission, Unemployment Insurance Appeals Board, Water Resources Control Board, Worker's Compensation Appeals Board, and the Youthful Offender Parole Board.

NOTE: Authority cited: Sections 3517.8, 19815.4(d), 19849.13 and 19849.16, Government Code. Reference: Sections 19849.13 and 19849.16, Government Code.

HISTORY

1. New section filed by the Department of Personnel Administration with the Secretary of State on 12–28–90, effective on filing; operative 7–2–91 pursuant to Department of Personnel Administration. Submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 7).
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 3539.5; operative 7–2–91 (Register 91, No. 43).
3. Amendment of subsections (c) and (g) filed 3–30–95; operative 1–1–94. Submitted to OAL for printing only pursuant to Government Code section 3559.5 (Register 95, No. 13).

§ 599.752.2. Absence Reports – Board and Commission Members.

(a) Each pay period an employee accruing paid leave under section 599.752.1 shall submit a Standard Form 634 to the appointing authority providing personnel and payroll processing services. All absences during the pay period must be reported. If no absences occurred, a statement so indicating must be made on the form. Annual leave or vacation credits may be used for any absence. Sick leave credits may only be used as provided by Department of Personnel Administration regulations.

(b) If sufficient leave credit is not available to offset an employee's absences the appointing authority shall reduce the employee's salary for any absence of a full day or more in an amount equal to the time absent.

(c) The appointing authority providing personnel and payroll processing service shall keep proper records and schedules of leave accumulated and used and shall make reports thereof to the Director of the Department of Personnel Administration upon request.

NOTE: Authority cited: Sections 3517.8, 19815.4(d), and 19849.16, Government Code. Reference: Section 19849.16, Government Code.

HISTORY

1. New section filed by the Department of Personnel Administration with the Secretary of State on 12–28–90, effective on filing; operative 7–2–91 pursuant to Department of Personnel Administration. Submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 7).
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 3539.5; operative 7–2–91 (Register 91, No. 43).

§ 599.752.3. Lump–Sum and Partial Salary Payments—Board and Commission Members.

(a) Upon separation from service an employee accruing paid leave under Rule 599.752.1 is entitled to a lump–sum payment for any unused annual leave or vacation accumulated. The computation of the sum shall be based on actual accumulated time on the date of separation.

(b) The employee may annually elect to be paid at their regular rate of pay for unused annual leave or vacation credits subject to the provisions of Rule 599.744.

(c) Effective January 1, 1994 an employee separating from service shall receive lump–sum payment of their accumulated annual leave, vacation, and personal leave credits based on monthly employment as defined in Rule 599.669.

(d) Partial month salary payments shall be calculated based on monthly employment as defined in Rule 599.669.

(e) Lump–sum payment for unused annual leave, vacation, or personal leave credits earned by the employee in civil service and/or exempt positions prior to appointment as a board or commission member shall be at the regular rate of pay for the position and classification in which paid leave was last earned prior to appointment to the board or commission.

NOTE: Authority cited: Sections 3517.8, 19815.4(d), 19849.13 and 19849.16, Government Code. Reference: Sections 19849.13 and 19849.16, Government Code.

HISTORY

1. New section filed by the Department of Personnel Administration with the Secretary of State on 12–28–90, effective on filing; operative 7–2–91 pursuant to Department of Personnel Administration. Submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 7).
2. Amendment of section submitted to OAL for printing only pursuant to Government Code section 3539.5; operative 7–2–91 (Register 91, No. 43).
3. New subsection (c) filed 12–31–93; operative 1–1–94. Submitted to OAL for printing only pursuant to Government Code section 3539.5 (Register 94, No. 4).
4. New subsection (d) filed 6–30–94; operative 7–1–94. Submitted to OAL for printing only pursuant to Government Code section 3539.5 (Register 94, No. 26).
5. Amendment of subsection (c) filed 3–30–95; operative 1–1–94. Submitted to OAL for printing only pursuant to Government Code section 3559.5 (Register 95, No. 13).
6. Amendment of section heading and subsection (c), new subsection (d), subsection relettering, and amendment of newly designated subsection (e) filed 3–2–99; operative 3–2–99. Submitted to OAL for printing only (Register 99, No. 10). At the request of DPA pursuant to Government Code section 3539.5, OAL is directing the printing of this regulation in the CCR. Title 1, CCR, section 6(b)(2)(F)1 defines "print only" regulations as "regulations *adopted pursuant to the requirements of the APA*, but which are expressly exempted by statute from OAL review . . ." (Emphasis added.) In complying with DPA's request, OAL makes no determination concerning whether or not DPA has met the statutory requirements for adoption of regulations set forth in Government Code sections 11346–11347.3, including but not limited to public notice and comment. See 1998 OAL Determination No. 40 (Department of Personnel Administration, 96–008, December 9, 1998), California Regulatory Notice Register 99, No. 3–Z, January 15, 1999, p. 139, at p. 145; typewritten version, p. 18.
7. Editorial correction of HISTORY 6 (Register 99, No. 16).

§ 599.753. Annual Leave—Enrollment.

(a) Employees who move into an eligible category as defined in Government Code section 19858.3 will be allowed to elect annual leave without being required to satisfy the waiting period for nonindustrial disability insurance prescribed in section 599.776.

(b) Annual leave shall be certified by the appointing power upon forms prescribed by the Director of the Department of Personnel Administration.

The appointing power shall keep proper records and schedules of annual leave accumulated and granted and shall make such reports thereof to the Director of the Department of Personnel Administration as may from time to time be required.

NOTE: Authority cited: Sections 19815.4(d) and 19816, Government Code. Reference: Sections 19858.3, and 19858.4, Government Code.

HISTORY

1. New section filed by the Department of Personnel Administration with the Secretary of State on 12–30–86; effective upon filing. Submitted to OAL for printing only pursuant to Government Code Section 11343.8 (Register 87, No. 6).
2. Amendment filed by the Department of Personnel Administration with the Secretary of State on 12–15–88; operative 1–1–89. Submitted to OAL for printing only pursuant to Government Code Section 11343.8 (Register 89, No. 4).
3. Amendment of subsection (a) filed 8–10–92 with the Secretary of State by Department of Personnel Administration; operative 8–15–92. Submitted to OAL for printing only pursuant to Government Code section 3539.5 (Register 92, No. 33).
4. Amendment of subsection (a) filed 11–30–99; operative 11–30–99. Submitted to OAL for printing only pursuant to Government Code section 3539.5 (Register 99, No. 49).

Article 10.5. Holidays

§ 599.754. Personal Holiday.

When a non–represented employee is denied use of a personal holiday, the Department head or designee may allow the employee to reschedule the personal holiday; or shall, at the department's discretion allow the employee to either carry the personal holiday to the next fiscal year or, cash out the holiday on a straight time (hour for hour) basis. Employees shall not be allowed to carry over or cash out more than two (2) personal holidays in any fiscal year.

NOTE: Authority cited: Section 3517.8, Government Code. Reference: Section 19854, Government Code.

HISTORY

1. New section filed by the Department of Personnel Administration with the Secretary of State on 6–27–85; effective upon filing. Submitted to OAL for printing only pursuant to Government Code Section 11343.8 on 7–9–85 (Register 85, No. 32).

Article 11. Industrial Disability Leave

§ 599.755. Eligibility.

State employees, as designated in Government Code Section 19869, who become disabled due to accident or illness arising out of or in the course of State employment, within the meaning of Government Code Section 19870, shall be eligible to receive Industrial Disability Leave benefits beginning January 1, 1975. Eligibility shall be contingent upon appropriate medical determination and the agreement of the employee to cooperate and participate in a reasonable vocational rehabilitation plan when furnished by the State.

Any eligible employee on that date who is receiving Workers' Compensation temporary disability benefits due to work–related injuries or illness occurring since July 1, 1974, shall have 30 calendar days to elect Industrial Disability Leave in place of Workers' Compensation. Employees who do not elect Industrial Disability Leave shall continue to receive Workers' Compensation benefits. Failure to respond shall be construed as rejection of the option.

Industrial Disability Leave benefits under this section shall not be retroactive. For qualifying disabilities occurring prior to January 1, 1975, the 52–week eligibility period for receipt of benefits shall begin on January 1, 1975, as if the disability had occurred on that date. Work–related disabilities occurring prior to July 1, 1974, shall not be covered by Industrial Disability Leaves.

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19877, Government Code. Reference: Sections 19871, 19876 and 19877.1, Government Code.

HISTORY

1. New Article 11 (Sections 599.755–599.768, not consecutive) filed 9–6–83; effective thirtieth day thereafter (Register 83, No. 37).

CROSS REFERENCE: Title 2, Division 1, Chapter 1, Subchapter 1, Sections 410–418.

§ 599.756. Computation of Benefit.

The employee's salary rate and the number of days and hours for which payment would have been made had the disability not occurred shall be used to compute Industrial Disability Leave payments in accordance with Sections 19870(b) and 19871 of the Government Code at the time of disability. Thereafter payments shall be adjusted to reflect any salary adjustment the employee would have received had the disability not occurred.

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19877, Government Code. Reference: Sections 19870 and 19871, Government Code.

§ 599.757. Eligibility Period.

For the purpose of administering the Industrial Disability Leave benefit, the 52–week eligibility period shall be equivalent to 365 calendar days.

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19877, Government Code. Reference: Sections 19871 and 19872, Government Code.

§ 599.758. Medical Eligibility Determination.

The State Compensation Insurance Fund shall make all temporary disability determinations based on medical evidence in accordance wit its authority under Sections 11870 and 11871 of the Insurance Code. Eligibility for benefits shall be contingent upon the certification of disability by State Compensation Insurance Fund. Upon expiration of Industrial Disability Leave benefits, State Compensation Insurance Fund shall determine whether disability continues to exist and shall further determine the disabled employee's eligibility to receive Workers' Compensation temporary disability benefits.

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19877, Government Code. Reference: Sections 11870 and 11872, Insurance Code; and Sections 19871, 19872, 19874, and 19876, Government Code.

§ 599.759. Benefit Choice.

For the first 22 working days of disability, all disabled employees shall receive Industrial Disability Leave (IDL) unless the gross amount of the IDL benefit is less than that which would be provided by Workers' Compensation Temporary Disability (WCTD) payments without supplementation, in which case the employee shall receive WCTD payments without supplementation rather than IDL payments. This initial benefit placement is subject to one opportunity to effect a retroactive change in accordance with a subsequent employee benefit choice provided by this Section. Upon failure of the employee to make a selection of benefits, the employee shall remain on IDL or WCTD without supplementation as initially placed. If, at any time, the status of an employee on IDL changes such that the gross amount of IDL benefits becomes less than his/her WCTD benefits without supplementation, then the employee shall be automatically changed to WCTD without supplementation.

The following sets forth the disabled employee's benefit choices:

(1) Employees whose disabilities are resolved within 22 working days may elect that their initial benefit placement be changed to WCTD with supplementation retroactive to the first day of disability.

(2) All employees may make an election of those benefits they will receive effective beginning with the 23d working day of disability should their disability last that long. Employees may elect to receive either IDL or WCTD with or without supplementation. At employee election, this same choice may also be retroactive to the first day of disability. Disabled employees shall not be placed on IDL for any period of time during which the gross amount of IDL payments is less than WCTD without supplementation.

The disabled employee shall notify the appointing power of his choice of benefits within 15 calendar days after the disability has been verified and departmental liability for the disability has been determined. Prior to the expiration of the 15–day period, the appointing power shall contact the disabled employee to determine the need for making a benefit choice and to explain the benefit options avalable.

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19877, Government Code. Reference: Sections 19870, 19871 and 19872, Government Code.

§ 599.760. Change of Benefits.

At any time during the first 90 calendar days of absence, the disabled employee may notify the appointing power regarding a change in the choice of benefits from Industrial Disability Leave to workers' compensation disability benefits with or without the option of supplementation of leave credits or from workers' compensation temporary disability benefits to Industrial Disability Leave. Such change in benefits shall be a one–time opportunity and shall be effective on the 90th calendar day of absence. The amount of benefit shall be that which the employee would have received on the 90th calendar day had the benefit been initially elected.

A failure of the employee to exercise the option by that date shall result in no further opportunity for an employee to change benefits.

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19877, Government Code. Reference: Sections 19871 and 19872, Government Code.

§ 599.761. Return to Work Coordinator.

A return to work coordinator shall be designated in each State department. The duties and responsibilities of the coordinator shall include but not be limited to insuring that the disabled employee is informed of the benefits which are provided and to facilitate his/her early return to work.

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19877, Government Code. Reference: Sections 19871.1 and 19876, Government Code.

HISTORY

1. New section filed 2–9–84 (corrected copy refiled 2–27–84); effective thirtieth day thereafter (Register 84, No. 8).
2. Editorial correction of HISTORY NOTES printed in error in Register 84, Nos. 8 and 12 (Register 84, No. 15).

§ 599.762. Offset to Other Payments.

In accordance with Government Code Section 19871, Industrial Disability Leave benefit payments shall be adjusted to offset disability benefits, excluding those disability benefits payable from the State Teachers' Retirement System, the employee may receive from other employer subsidized programs. A disabled employee shall be required to inform the appointing power in writing that such benefits are being received. Failure to do so shall result in termination of Industrial Disability Leave benefits.

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19877, Government Code. Reference: Section 19871, Government Code.

§ 599.763. Guardian or Trustee for Industrial Disability Leave.

If a disabled employee is incapable of making decisions, the appointing power or the disabled employee's spouse or representative shall request through the State Compensation Insurance Fund that the Worker's Compensation Appeals Board appoint a guardian or trustee in accordance with Section 5408 of the Labor Code. In such cases, the time limitations on the benefit choice provisions of Section 599.759 shall be waived.

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19877, Government Code. Reference: Section 5408, Labor Code; and Sections 19870, 19871 and 19872, Government Code.

§ 599.764. Vocational Rehabilitation.

Vocational rehabilitation means a system for providing necessary and appropriate services to a disabled employee leading to a vocational goal.

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19877, Government Code. Reference: Sections 19871.1 and 19876, Government Code.

§ 599.765. Participation in Vocational Rehabilitation.

In order to continue receiving Industrial Disability Leave, the disabled employee shall be required to participate in a vocational rehabilitation plan when offered by the State, provided that the requirements for participation are met as set forth in Labor Code Section 139.5 and the regulations of the Division of Industrial Accidents.

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19877, Government Code. Reference: Section 139.5, Labor Code; and Sections 19871.1 and 19876, Government Code.

§ 599.766. Placement.

The appointing power shall take at least one of the following actions at such time as the employee has successfully completed the vocational rehabilitation program initiated while under Industrial Disability Leave:

(a) Restore the employee to the former position;

(b) Demote or transfer to another position, if the employee is able to perform such duties;

(c) Request the State Personnel Board to assist in placing the employee in another position in State service;

(d) Place the employee on a training and development assignment in another line of work with intent to transfer at a later date;

(e) Place the name of the employee on all appropriate reemployment lists as determined by the State Personnel Board at such time as no immediate placement is available.

If the employee is medically unable to undergo or successfully complete the vocational rehabilitation program, or if the employee has successfully completed vocational rehabilitation but suitable employment is not available with the State, the appointing power may medically terminate the employee or request a disability retirement from the position to which the employee holds a permanent appointment. Such actions shall be effective after expiration of Industrial Disability Leave benefits and leave credits the employee may have, and shall be consistent with the provisions of the Worker's Compensation Act under the Labor Code and Government Code Section 19253.5.

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19877, Government Code. Reference: Sections 19253.5, 19871.1 and 19876, Government Code.

§ 599.767. Medical Officer's Responsibilities.

Where there is disagreement concerning the medical suitability of placement of the disabled employee who has completed the vocational rehabilitation program, the State Personnel Board Medical Officer shall determine the appropriateness of the placement based upon the medical evidence submitted.

NOTE: Authority cited: Sections 19815.4(d) and 19877, Government Code. Reference: Sections 19253.5 and 19876, Government Code.

§ 599.768. Appeals.

The employee shall first seek departmental administrative remedy for complaints arising out of Industrial Disability Leave. Thereafter, the employee shall have the right of appeal to:

(a) The Division of Industrial Accidents on matters within the jurisdiction of the Worker's Compensation Act of the Labor Code. Such matters include but are not limited to determination of liability for provision of medical care, temporary disability payments, vocational rehabilitation, and related items.

(b) The Department of Personnel Administration on employee benefit matters as provided by the Government Code. Such matters include, but are not limited to, issues involving Industrial Disability Leave payments, leave administration, and related matters.

(c) The Department of Rehabilitation on matters within the rehabilitation provisions of the Welfare and Institutions Code. Such matters include, but are not limited to, issues relating to the provision of services by the Department of Rehabilitation.

NOTE: Authority cited: Sections 19815.4(d) and 19816, Government Code. Reference: Section 19877, Government Code.

§ 599.769. Enhanced Industrial Disability Leave—Excluded Employees.

An excluded employee is defined in section 599.615(b).

(a) An excluded employee who is temporarily disabled as the result of an injury which was incurred in the official performance of his/her duties shall be eligible for an enhanced industrial disability leave benefit as provided in section 19871.2 of the Government Code.

(b) Definition of Injury. Such injury must be a physical injury which has been directly and specifically caused by:

(1) An assault by an inmate, ward, or parolee under the jurisdiction of the California Department of Corrections or the Department of Youth Authority; or

(2) Responding to, returning from, or fighting an "active fire" as defined in sections 4103, 4104, 4170 and 4170.5 of the Public Resources Code; or

(3) A "criminal act of violence" against a peace officer who was performing in the line of duty. For purposes of this Article, "criminal act of violence" means an act which would constitute a misdemeanor or felony if pursued to conviction; or

(4) An assault by a resident, inmate, patient or client under the jurisdiction of the Department of Developmental Services or the Department of Mental Health or the Department of Veterans Affairs.

(c) Exclusion. Enhanced Industrial Disability Leave benefits will only apply to physical injuries and any medical complications directly related medically and attributable to the circumstances enumerated in subsection (a), above, as determined by the appointing power or his/her designee. The enhanced benefit shall not be applied to either presumptive, stress related disabilities or a physical disability having mental origins.

(d) Eligibility. An excluded employee shall be eligible for enhanced Industrial Disability Leave benefits if:

(1) The excluded employee's temporary disability arises from one of the circumstances enumerated in subsection (b) above; and

(2) The excluded employee is in a classification having responsibility for the supervision of represented employees who are eligible for such enhanced benefits as provided in the Memoranda of Understanding for Unit 3 (Institutional Education), Unit 4 (Office and Allied), Unit 6 (Corrections), Unit 7 (Protective Services and Public Safety), Unit 8 (Firefighters), Unit 15 (Custodial Services), Unit 17 (Registered Nurse), Unit 18 (Psychiatric Technician), and Unit 20 (Medical and Social Services Support).

(e) Administration. Except as otherwise provided in this section and section 19871.2, the existing regulations governing the administration of Industrial Disability Leave shall also apply to the administration of Enhanced Industrial Disability Leave.

NOTE: Authority cited: Sections 3539.5, 19815.4(d) and 19877, Government Code. Reference: Sections 19870(c) and 19871.2, Government Code.

HISTORY

1. New section filed by the Department of Personnel Administration with the Secretary of State on 11–21–84; effective upon filing. Submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 85, No. 18).
2. Amendment filed by Department of Personnel Administration with the Secretary of State on 9–20–85; effective upon filing. Submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 85, No. 41).
3. Change without regulatory effect amending section heading, section, and NOTE filed 6–29–92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 27).
4. Editorial correction of HISTORY 2 (Register 95, No. 40).

Article 12. Nonindustrial Disability Insurance

§ 599.770. Eligibility.

State employees, as designated in Government Code Section 19878, who become disabled due to injury, illness, or pregnancy, within the meaning of Government Code Section 19878, while in compensated employment, shall be eligible to receive Nonindustrial Disability Insurance benefits. In order to receive Nonindustrial Disability Insurance benefits, an employee shall meet the following eligibility requirements:

(a) Be a current active Public Employees' Retirement System member or State Teachers' Retirement System member; or a full–time State Officer or employee of the Legislature.

(b) Be a full–time permanent or probationary State employee; or a part–time or intermittent permanent or probationary State officer or employee with at least the equivalent of six monthly compensated pay periods of service in the 18 pay periods immediately preceding the pay period in which the disability begins.

(c) Serve a seven consecutive calendar day waiting period for each spell of disability. The waiting period may be waived commencing with the first full day of confinement in a hospital or nursing home.

(d) Exhaust all accrued sick leave.

(e) Submit to an independent medical examination as the Employment Development Department may require.

(f) File the appropriate certificate as described in Unemployment Insurance Code Sections 2708 and 2709.

(g) Meet all other eligibility requirements as provided in Part 2 of the Unemployment Insurance Code.

An employee may elect to use vacation leave credits prior to receiving Nonindustrial Disability Insurance benefits; however, Nonindustrial Disability Insurance benefits shall not commence thereafter until the employee totally exhausts the accrued vacation leave balance. An employee may at any time switch from Nonindustrial Disability Insurance benefits to vacation leave.

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19885, Govrnment Code. Reference: Sections 19878, 19880 and 19880.1, Government Code.

HISTORY

1. New section filed 2–9–84 (corrected copy refiled 2–27–84); effective thirtieth day thereafter (Register 84, No. 8).
2. Editorial correction of HISTORY NOTES printed in error in Register 84, Nos. 8 and 12 (Register 84, No. 15).

§ 599.771. Eligibility Period.

For the purpose of administering the Nonindustrial Disability Insurance benefit program, the 26–week benefit eligibility period shall be equivalent to 182 calendar days.

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19885, Government Code. Reference: Sections 19878 and 19879, Government Code.

HISTORY

1. New Article 12 (Sections 599.771–599.775, not consecutive) filed 9–6–83; effective thirtieth day thereafter (Register 83, No. 37).

CROSS REFERENCE: See Title 2, Division 1, Chapter 1, Subchapter 1, Sections 419–423.

§ 599.772. Calculation of Benefit.

The employee's salary rate on the day of the monthly pay period in which Nonindustrial Disability Insurance benefits are compensable shall be used to compute Nonindustrial Disability Insurance payments. Thereafter payment shall not be modified to reflect any salary adjustments which the employee would have received had the disability not occurred.

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19885, Government Code. Reference: Sections 19878, 19879, 19883 and 19884, Government Code.

§ 599.773. Investigations and Appeals.

The Employment Development Department shall have the authority to investigate Nonindustrial Disability Insurance claims filed by employees in all State agencies. All fraudulent claims shall be subject to both criminal and civil prosecution by appropriate authorities. Nonindustrial Disability Insurance benefits may be immediately suspended upon the filing of a criminal complaint concerning such fraudulent activity. The Employment Development Department shall be responsible for appeals arising out of the Nonindustrial Disability Insurance Program.

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19885, Government Code. Reference: Sections 19880, 19881 and 19884, Government Code.

§ 599.774. Cessation of Benefits.

Nonindustrial Disability Insurance benefits shall not be payable for any day on or after death, separation, leave of absence, or retirement from State service. An employee shall not have an application for Nonindustrial Disability Insurance benefits approved for payment while on suspension due to a disciplinary action.

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19885, Government Code. Reference: Section 19878, Government Code.

HISTORY

1. New section filed 2–9–84 (corrected copy refiled 2–27–84); effective thirtieth day thereafter (Register 84, No. 8).
2. Editorial correction of HISTORY NOTES printed in error in Register 84, Nos. 8 and 12 (Register 84, No. 15).

§ 599.775. Return to Work.

Once an employee totally or partially exhausts Nonindustrial Disability Insurance benefits, the appointing power may return the employee to the employee's former position or take any of the actions provided by Government Code Section 19253.5.

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19885, Government Code. Reference: Sections 19253.5, 19879 and 19880, Government Code.

§ 599.776. Nonindustrial Disability—Annual Leave.

(a) A non–industrial disability benefit level of 50% of gross pay shall be provided to employees who elect annual leave. Annual leave, sick leave or partial employment may be used to supplement non–industrial disability insurance (NDI) benefits to provide 75% or 100% of gross pay. Employees must continue the same benefit level throughout the disability period. Employees may select the NDI benefit rate or supplementation during subsequent disability periods. Employees shall not be required to exhaust leave credits prior to receiving non–industrial disability benefits.

(b) Employees who enroll in the Annual Leave Program while on NDI leave shall continue to receive the current level of benefits for their prior CBID throughout the disability period.

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19885, Government Code. Reference: Sections 19858.3 and 19858.4, Government Code.

HISTORY

1. New section filed by Department of Personnel Administration with the Secretary of State on 12–30–86; effective upon filing. Submitted to OAL for printing only pursuant to Government Code Section 11343.8 (Register 87, No. 6).
2. Amendment filed by the Department of Personnel Administration with the Secretary of State on 11–10–87; operative 11–10–87. Submitted to OAL for printing only pursuant to Government Code Section 11343.8 (Register 87, No. 52).
3. Amendment and designation of subsections (a) and (b) and new subsections (c) and (d) filed 8–10–92 with the Secretary of State by Department of Personnel Administration; operative 8–15–92. Submitted to OAL for printing only pursuant to Government Code section 3539.5 (Register 92, No. 33).
4. Repealer of subsections (c)–(d) filed 11–30–99; operative 11–30–99. Submitted to OAL for printing only pursuant to Government Code section 3539.5 (Register 99, No. 49).

§ 599.776.1. Nonindustrial Disability—Annual Leave—Excluded Employees.

An excluded employee is defined in section 599.615(b).

(a) A non–industrial disability benefit level of 50% of gross pay shall be provided to exclude employees who elect annual leave. Annual leave,

sick leave or partial employment may be used to supplement non–industrial disability insurance (NDI) benefits to provide 75% or 100% of gross pay. Once benefit payments have begun, the benefit level initially selected by an excluded employee must continue throughout the disability period; however, the 50% NDI benefit level will be payable to any excluded employee who no longer has leave credits for supplementation or is no longer partially employed. The NDI benefit rate or a different level of supplementation may be selected during subsequent disability periods. Excluded employees shall not be required to exhaust leave credits prior to receiving non–industrial disability benefits.

(b) Effective July 1, 1994, excluded employees who supplement their NDI benefits, as provided in paragraph (a) of this section, shall be considered to have served a qualifying monthly pay period for any of the rights or benefits dependent on having worked a complete month, as prescribed in Section 599.608. These rights or benefits include, but are not limited to, those prescribed in Sections 599.682, 599.687, 599.752, 599.752.1, 599.787, and 599.840. Excluded employees who supplement their NDI at the 75% level shall receive service and annual leave credits at one–half the rate granted to those who supplement at 100%. If a holiday falls during the period of supplementation, an excluded employee will not have to charge the day against the leave supplementation amount.

(c) Excluded employees who enroll in the Annual Leave Program while on NDI leave shall continue to receive the current level of benefits for their prior CBID throughout the disability period.

(d) Current excluded employees who elect to enroll in the Annual Leave Program on or after November 1, 1992 must be enrolled in the program for 90 days prior to becoming eligible for the 50% NDI benefit provided for under this regulation. This waiting period will not apply to any excluded employee who elects to enroll within 60 days of employment in an eligible position.

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19885, Government Code. Reference: Sections 19858.3 and 19858.4, Government Code.

HISTORY

1. New section filed 12–16–94; operative 7–1–94. Submitted to OAL for printing only pursuant to Government Code section 3539.5 (Register 94, No. 50).

§ 599.777. Exhausting of Leave Credits—Excluded Employees.

An excluded employee is defined in section 599.615(b).

(a) As of August 15,1987, a disabled excluded employee who elects to use sick leave or other elective credits prior to receiving Nonindustrial Disability Insurance benefits is not required to exhaust the leave.

NOTE: Authority cited: Sections 3539.5, 19815.4(d) and 19816, Government Code. Reference: Section 19880, Government Code.

HISTORY

1. New section filed by Department of Personnel Administration with the Secretary of State on 12–11–87, operative 12–11–87. submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 88, No. 4).
2. Change without regulatory effect amending section heading, section, and NOTE filed 6–29–92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 27).
3. Editorial correction of Authority cite (Register 95, No. 5).

§ 599.778. Disability Benefits—Excluded Employees Effective January 1, 1989.

An excluded employee is defined in section 599.615(b).

(a) Eligible excluded employees are entitled to receive Nonindustrial Disability Insurance benefits in an amount equal to one–half full pay, but not to exceed one hundred thirty–five dollars ($135) per week.

NOTE: Authority cited: Sections 3539.5, 19815.4(d), 19816 and 19878, Government Code. Reference: Section 19879, Government Code.

HISTORY

1. New section filed by the Department of Personnel Administration with the Secretary of State on 12–15–88; operative 1–1–89. Submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 89, No. 4).
2. Change without regulatory effect amending section heading, section, and NOTE filed 6–29–92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 27).

Article 12.5. Industrial Disability Retirement

§ 599.779. Scope.

Pursuant to Government Code Sections 19876.5, 19877, 21021.5, 21020.6, 21292.4 and Labor Code Section 139.5(g), an employee in Bargaining Units 1, 4, 15, 18, and 20 who suffers a qualifying industrial injury or illness and who is permanently unable to perform the duties of his/her current position is eligible to participate in this program.

NOTE: Authority cited: Section 21021.5, Government Code. Reference: Sections 19876.5, 19877, 21020.6 and 21292.4, Government Code; and Section 139.5, Labor Code.

HISTORY

1. New article 12.5 and section filed 10–20–94; operative 11–21–94 (Register 94, No. 42).

§ 599.779.1. Definitions.

For the purposes of this Article, the following definitions apply:

(a) Industrially Disabled. Disabled from performing any job in State service as a result of a work related illness or injury.

(b) Permanent and Stationary. A disability is considered permanent after the employee has reached maximum improvement or his/her condition has been stable for a reasonable period of time. A physician determines the date that a medical condition becomes permanent and stationary.

(c) Qualified Injured Worker. An employee who (1) has an injury which permanently precludes, or is likely to preclude, him or her from engaging in his or her usual occupation or the position in which he or she was engaged, and (2) can reasonably be expected to return to gainful employment through vocational rehabilitation services.

(d) Same or Similar Salary. The maximum salary of a classification that is at least 85% of the maximum salary of the job classification the employee was in at the time of the qualifying injury. It is further defined to include classifications with higher salaries to which the employee may transfer according to State Personnel Board rules.

(e) Same or Similar Location. Any work location to which the employee could be reassigned which would not require the employee to relocate according to the standards defined in a memoranda of understanding, or the Department of Personnel Administration rules, whichever is controlling for the purpose of relocation.

(f) Originating Department. The department where the employee was working when the injury occurred.

(g) Receiving Department. A department, other than the originating department, that hires an employee covered by the provisions of this Article.

NOTE: Authority cited: Section 211021.5, Government Code. Reference: Section 19876 and 19877; and Section 139.5, Labor Code.

HISTORY

1. New section filed 10–20–94; operative 11–21–94 (Register 94, No. 42).

§ 599.779.2. Selection of an Appropriate Position.

When an eligible employee is medically incapable of performing the essential functions of his/her current job, or any other position in his/her current classification, the originating department must make every reasonable effort to place the qualified injured worker in a vacant position in another classification within the department or find the employee suitable employment with another State department. Efforts to accommodate the employee within the department should include, but not be limited to, altering the employee's work environment, providing specialized

equipment, restructuring job duties, and training and development assignments. The originating department's efforts to find the employee a suitable position in another department shall include, but not be limited to, identifying vacant positions in other departments within the same or similar location and at the same or similar salary, contacting the hiring departments to arrange interviews and assisting the employee to prepare for the employment interview.

The originating department shall begin the placement process as soon as the employee is determined to be a qualified injured worker, but no later than the date the employee is determined to be permanent and stationary. Such placement efforts must continue for a minimum of 90 calendar days from the date that the employee is permanent and stationary. The department shall make every effort to assign the qualified injured worker to a vacant position that is equivalent to the former position in terms of pay and status and to work with the employee to provide the best job match. However, the department may reassign the employee to a lower position if there are no equivalent positions for which the individual is qualified, with or without reasonable accommodation, as long as that position meets the criteria of "same or similar" salary and location. Factors such as the nature of the employee's disability and the cost of retraining the employee for the new job shall be taken into consideration when making this decision. If the employee refuses the job offer proposed by any department, the employee shall be denied his/her rights to Industrial Disability Leave, Enhanced Industrial Disability Leave, Industrial Disability Retirement and Vocational Rehabilitation.

NOTE: Authority cited: Section 21021.5, Government Code. Reference: Sections 19876.5 and 19877, Government Code; and Section 139.5, Labor Code.

HISTORY

1. New section filed 10–20–94; operative 11–21–94 (Register 94, No. 42).

§ 599.779.3. Injured State Worker Placement.

If the appointing power is unable to place the qualified injured worker within 90 days from the date the employee is medically certified as permanent and stationary and able to return to work, the Department of Personnel Administration shall take measures to place the employee in an appropriate position in another State agency by restricting other methods of appointment, including appointments under the State Restriction of Appointments Process (SROA). An employee's name may remain on one or more SROA lists for up to one year. When the Department of Personnel Administration determines that placement on a reemployment list would provide significant, additional opportunity to place the employee, it shall request that the State Personnel Board place the employee's name on appropriate reemployment lists.

NOTE: Authority cited: Section 21020.5, Government Code. Reference: Sections 19876.5, 19877 and 19998.1, Government Code.

HISTORY

1. New section filed 10–20–94; operative 11–21–94 (Register 94, No. 42).

§ 599.779.4. Employment Costs for the Injured Employees.

It is the intent of this Article that qualified injured workers will be accommodated, whenever possible, in the department where the employee worked at the time of the injury. However, it is possible that some employees will be placed in other departments. If a qualified injured worker receives an appointment to a new position in a department other than his/her originating department, the originating department is responsible for the following costs, in addition to any permanent disability settlement and ongoing medical costs:

(a) all necessary and reasonable expenses for the cost of training the employee in the required job duties of the new classification.

(b) all relocations costs, in accordance with the Department of Personnel Administration rules, for any employee who relocates in order to accept a position which is not in the same or similar location.

(c) any overtime, holiday credit, excess hours, or personal leave credits that are due to the employee on the date of transfer.

(d) any special equipment that may be required because of the employee's disability.

NOTE: Authority cited: Section 21020.5, Government Code. Reference: Sections 19876.5 and 19877, Government Code; and Section 139.5, Labor Code.

HISTORY

1. New section filed 10–20–94; operative 11–21–94 (Register 94, No. 42).

§ 599.779.5. Denial of Benefits for Failure to Participate.

Employee benefits will be denied to a qualified worker who does not participate in a reasonable and appropriate vocational rehabilitation plan necessary to continue State employment. Participation in a rehabilitation plan may include some or all of the following activities: skill assessment, vocational counseling, additional medical testing, job interviews and training. Benefits include, but are not limited to Industrial Disability Leave, Enhanced Industrial Disability Leave, Industrial Disability Retirement, and other Vocational Rehabilitation Training.

NOTE: Authority cited: Section 21020.5. Reference: Sections 19876.5 and 19877, Government Code.

HISTORY

1. New section filed 10–20–94; operative 11–21–94 (Register 94, No. 42).

§ 599.779.6. Post Retirement Job Opportunities.

If a suitable position cannot be found for a qualified injured worker, the employee may be offered an alternate vocational rehabilitation plan or he/she may be placed on Industrial Disability Retirement. However, if the employee is retired under these circumstances and a job subsequently becomes available, within twelve months of the effective date of retirement, that meets the tests of "same or similar salary" and "same or similar location," then the employee will be required to reinstate into State service and the IDR benefits will be terminated effective on the date the job offer is made.

NOTE: Authority cited: Section 21100.55, Government Code. Reference: Sections 21020.5 and 21292.4, Government Code.

HISTORY

1. New section filed 10–20–94; operative 11–21–94 (Register 94, No. 42).

§ 599.779.7. Appeal Rights.

Employees may appeal to the Director of the Department of Personnel Administration if he/she believes either (1) that he/she should not be required to participate in the program, or (2) that he/she should not be excluded from this program. An employee must submit the appeal in writing stating the grounds for the protest. The appeal shall be filed within thirty (30) days of the date the originating department notifies the employee in writing that he/she either must participate in, or is excluded from, this program.

NOTE: Authority cited: Section 21020.5, Government Code. Reference: Section 21020.5, Government Code.

HISTORY

1. New section filed 10–20–94; operative 11–21–94 (Register 94, No. 42).

Article 13. Absences

§ 599.780. Rest Periods.

Every employee may be granted a rest period of not to exceed 15 minutes during each four hours or major fraction thereof of a working period but the total for any day shall not exceed 25 minutes. The appointing power or its designated representative shall determine the time when the rest period is to be taken and to whom it applies. Insofar as practicable, the rest period shall be granted in the middle of each work period. A rest period shall not be granted during the first or last hour of a work period nor shall rest period time be accumulated. Except with the consent of the appointing power an employee shall not leave the building where employed. No obligation is upon the appointing power to provide time or facilities for refreshments during the rest period or for the procurement thereof. No wage deduction or time off shall be made or charged for an authorized rest period, nor shall any rights accrue for overtime if the rest period is not taken. Rest periods shall not be authorized where granting them would in any instance result in an increase in the budget for salaries and wages of any state agency.

NOTE: Authority cited: Section 19815.4(d) and 19816, Government Code. Reference: Section 19849, Government Code.

HISTORY

1. New Article 13 (Sections 599.780–599.791) filed 9–6–83; effective thirtieth day thereafter (Register 83, No. 37).

CROSS REFERENCE: See Title 2, Division 1, Chapter 1, Subchapter 1, Sections 360–374.

§ 599.781. Leave of Absence.

A leave of absence shall not be granted under this section to any employee who is accepting some other position in the State service; or who is leaving the State service to enter other employment except as hereto in provided; or who does not intend to nor can reasonably be expected to return to State service on or before the expiration of the leave.

An appointing power may grant a leave of absence without pay:

(a) To any employee for a period not to exceed 30 calendar days;

(b) To an employee who has permanent status and since that permanent status has had no break in continuity of State service due to permanent separation or a probationer who has completed six months or service in a class having a longer probationary period, or a probationer who was prevented from completing the probationary period because of entry into the military service of the United States.

The reason for the leave may be

(1) to attend school or college or to enter training to improve the quality of employee's service,

(2) temporary incapacity due to illness or injury,

(3) loaned to another governmental agency for performance of a specific assignment,

(4) to seek or accept other employment during a layoff situation or otherwise lessen the impact of an impending layoff, or

(5) for some other reason equally satisfactory as determined by the appointing power.

NOTE: Authority cited: Sections 19815.4(d) and 19816, Government Code. Reference: Sections 19991.2, 19991.5, 19991.7 and 19991.9, Government Code.

§ 599.782. Termination.

A leave of absence is terminated by:

(a) expiration of the term thereof;

(b) the sooner revocation thereof by the appointing power with the approval of the Director of the Department of Personnel Administration or by the Director with the approval of the appointing power and by receipt by the employee of written notice of such revocation at least 15 days prior to the effective day of the revocation; or

(c) the sooner cancellation thereof by the employee with the approval of the appointing power.

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19991.1, Government Code. Reference: Sections 19991.2, 19991.6, 19991.7, 19991.8 and 19991.9, Government Code.

§ 599.783. Procedure.

An employee shall not be entitled to a leave of absence as a matter of right except for service in the recognized military service or education for which eligible because of military service or for pregnancy, childbirth or the recovery therefrom. Upon receipt of a request for leave of absence for any other reason signed by the employee and stating with particularity the reason for the leave, the appointing power may either approve or disapprove the request. The appointing power shall obtain the approval of the Director prior to the effective date of the leave of absence if the request for leave of absence is for service in a foreign county in a technical cooperation program.

NOTE: Authority cited: Sections 19815.4(d) and 19816, Government Code. Reference: Sections 19991.1, 19991.2, 19991.3, 19991.5, 19991.6, 19991.7, 19991.8 and 19991.9, Government Code.

§ 599.784. *Reinstatement.*

A report of the reinstatement of an employee upon return from a leave of absence shall be made immediately by the appointing power to the Director of the Department of Personnel Administration. At the same time, the appointing power shall file with the Department a notice of the separation of the employee who filled the position during the absence of the employee on leave.

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19991.1, Government Code. Reference: Sections 19991.2, 19991.3, 19991.5, 19991.6, 19991.7, 19991.8 and 19991.9, Government Code.

§ 599.785. Informal Leave of Absence (Dock).

The appointing power may grant an informal leave of absence without pay for a period not to exceed 11 working days in a 22–day pay period or 10 working days in a 21–day pay period or 11 consecutive working days between pay periods. A holiday is counted as a working day. The appointing power shall not grant paid absences to break the continuity of a leave of absence without pay.

NOTE: Authority cited: Sections 19815.4(d) and 19816, Government Code. Reference: Section 19991.1, Government Code.

§ 599.785.5. Administrative Time Off—During State of Emergency.

(a) Employees may be granted a paid leave of absence of up to five days by their appointing power when the employee works or resides in a county where a state of emergency has been proclaimed by the Governor and the appointing power determines that at least one of the following conditions exist:

(1) The employee's normal place of business is closed temporarily, during the employee's normal work shift, due to the effects of the emergency.

(2) The emergency effectively precludes the employee's ability to find reasonable routes of transportation from the employee's normal residence to the work place.

(3) The emergency presents an immediate and grave peril to the employee's own safety, that of an employee's immediate family member, or the employee's principal residence.

(4) The employee is actively involved in a formal, organized effort to protect the health and safety of the general public; such as, the employee is a member of the auxiliary fire or police department or the employee is asked by local authorities to assist with sandbagging efforts.

(5) The employee needs to take time off to apply for disaster assistance from the Federal Emergency Management Agency (FEMA) because the employee is unable to apply for assistance before or after the employee's normal work shift.

(b) An employee may be granted a paid leave of absence up to five days by the employee's appointing power regardless of the location of the disaster when the employee is preregistered with, and providing volunteer service to, a State agency carrying out its responsibilities under the Governor's Executive Order D–25–83. The employees providing volunteer service are required to notify their appointing power of their affiliation with the volunteer services and to establish prior arrangements regarding the notification of the appointing power in the event the employee is asked to participate in the State disaster response. The appointing power shall release the employee to provide volunteer service when an emergency occurs unless there is a critical departmental operating reason to prevent such a release.

(c) No paid leave of absence shall exceed five working days without the prior approval of the appointing power and the prior approval of the Department of Personnel Administration. The Department of Personnel Administration shall grant approval of a paid leave of absence in excess of five working days based on its finding that one of the criteria above continues to be met.

(d) State employees called into service as specified in Government Code 19844.5 are excluded from the above standards.

NOTE: Authority cited: Sections 19815.4(d) and 19816, Government Code. Reference: Section 19991.10, Government Code.

HISTORY

1. New section filed 4–12–89; operative 5–12–89 (Register 89, No. 15).

§ 599.786. 10–12 Leave.

The appointing power may grant a leave of absence

(a) for not to exceed 75 calendar days during the summer vacation period to permanent or probationary civil service employees in the Special Education Program Support Unit of the Department of Education in positions which have a work period coinciding with the school year,

(b) for not to exceed 75 calendar days to permanent or probationary civil service employees or exempt employees of the California Maritime Academy in positions which have a work period coinciding with the academic year, or

(c) for not to exceed two consecutive pay periods during the period designated by the appointing power for release from performance of teaching duties to full–time permanent or probationary employees in positions requiring teacher certification qualifications. Such leaves do not require approval of the Director of the Department of Personnel Administration. Such leaves shall be without pay for persons employed and paid under the provisions of Section 599.666 and with deferred pay for persons employed and paid under the provisions of Section 599.667.

Leaves of absence granted under the provisions of this section shall be counted as qualifying service for merit and special in–grade salary adjustments, for seniority, and for computation of months of total State service to determine a change in the monthly credit for vacation with pay. For all other purposes, leaves of absence granted under the provisions of this rule shall not be counted as qualifying service.

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19991.1, Government Code. Reference: Sections 19829, 19832, 19858.1, 19991.7 and 19997.3, Government Code.

§ 599.787. Paid Educational Leave—Accumulation and Retention.

Following completion of 12 months of continuous service from November 8, 1967, each full time employee in the State civil service employed in a position requiring teaching certification qualifications shall be allowed 15 days of credit for educational leave with pay. Thereafter, for each additional pay period of service, 1 1/4 day credit shall be allowed for educational leave with pay on the first of the following month. Portions of pay periods of service shall not be counted or accumulated.

An employee may earn or use educational leave only while in a position requiring teacher certification qualifications. An employee who leaves a position requiring teacher certification qualifications and enters a position not requiring teacher certification qualifications within 36 months without break in service returns to a position requiring teacher certification qualifications will be credited with the prior unused educational leave.

Following temporary separation or permanent separation of less than six months an employee who returns to State service in a position requiring teaching certification qualifications shall retain any unused portion of previously accrued educational leave and shall commence to receive educational leave credit on the first of the month following completion of one month of service.

Following permanent separation of six months or longer an employee who returns to State service in a position requiring teaching certification qualifications loses any unused portion of previously accrued educational leave. The employee is granted education leave credit following completion of 12 months of continuous service, in accordance with the above schedule.

NOTE: Authority cited: Sections 19815.4(d) and 19816, Government Code. Reference: Section 19991.7, Government Code.

§ 599.788. Paid Educational Leave—Approval.

(a) The candidate for educational leave shall:

(1) Possess a valid credential required for employment in the civil service position held.

(2) File with the appointing power an application for educational leave specifying the name and location of the educational institution or program to be attended, dates of attendance, and courses and/or units to be taken. In addition, the employee shall file with the department, a statement of need in terms of educational goals of value to the professional growth of the candidate and value to the State service.

(b) The appointing power in granting or denying educational leave may consider institutional administrative needs, the educational program, work schedules, and the nature and availability of courses as well as the desire of the employee.

(c) Educational leave shall not be granted to an eligible employee who is accepting some other position in the State service not requiring teacher certification qualifications or who is leaving the State service.

(d) An employee whose request for educational leave is denied shall be informed of the reasons for such action in writing.

NOTE: Authority cited: Sections 19815.4(d) and 19816, Government Code. Reference: Section 19991.7, Government Code.

§ 599.789. Paid Educational Leave—Transfer.

When an employee leaves the employment of one State agency and enters the employment of another State agency, and both positions require teacher certification qualifications, the accumulated educational leave credit becomes a charge against the latter State agency.

NOTE: Authority cited: Sections 19815.4(d) and 19816, Government Code. Reference: Section 19991.7, Government Code.

§ 599.790. Paid Educational Leave—Department of Personnel Administration Review.

An employee who believes denial of educational leave was for purposes of harassment or discipline may appeal to the Department of Personnel Administration. An employee who has been denied education leave on three separate occasions by the appointing authority and has a total accumulation of 75 days or more of unused educational leave may request a review by the Department if the employee feels the request has been unreasonably denied.

Upon receiving a request for such an appeal or review the Department shall investigate the reasons for the denial and may make such recommendations to the appointing authority as it deems appropriate or take any other action permitted by law.

NOTE: Authority cited: Sections 19815.4(d) and 19816, Government Code. Reference: Section 19991.7, Government Code.

§ 599.791. Paid Educational Leave—Determining Eligibility of Current Employees.

For the purpose of initiating educational leave credits for State employees in positions requiring teaching certification qualifications, on November 8, 1967:

(a) An employee who had completed 12 months of continuous service on or before November 8, 1967, earns the first credit on December 1, 1967.

(b) An employee who completes 12 months of continuous service prior to November 8, 1968, shall be allowed one and one–quarter days credit for each complete monthly pay period of service from November 1, 1967, to such qualifying date.

NOTE: Authority cited: Sections 19815.4(d) and 19816, Government Code. Reference: Section 19991.7, Government Code.

§ 599.792. Paid Educational Leave—Excluded Employees.

NOTE: Authority cited: Sections 3539.5 and 19815.4(d), Government Code. Reference: Section 19991.7, Government Code.

HISTORY

1. New section filed by Department of Personnel Administration with the Secretary of State on 9–20–85; effective upon filing. Submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 85, No. 41).
2. Change without regulatory effect repealing text and amending section heading and NOTE filed 6–25–92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 26).

§ 599.792.5. Paid Educational Leave — Senior Laboratory Technologists and Senior Radiologic Technologists.

Employees in the classifications of Senior Clinical Laboratory Technologist and Senior Clinical Laboratory Technologist (Correctional Facility) will be entitled to 12 hours of educational leave on an annual basis effective January 1, 1994 to obtain continuing education units. Employees in the classification of Senior Radiologic Technologist (Supervisor) and Senior Radiologic Technologist, Correctional Facility (Supervisor) will be entitled to 24 hours of educational leave every two calendar years effective January 1, 1995 to obtain continuing education units. The leave time can be taken at the employee's discretion subject to the operational needs of the department and reasonable advance notice. In–service training courses for which continuing education unit credit is provided

may be counted at the State's option towards the hours of education leave. This leave is non–cumulative.

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19820, Government Code. Reference: Section 3539.5, Government Code.

HISTORY

1. New section filed 8–3–94; operative 8–3–94. Submitted to OAL for printing only pursuant to Government Code section 3539.5 (Register 94, No. 31).
2. Amendment of section heading, section and NOTE filed 5–4–95; operative 5–4–95. Submitted to OAL for printing only pursuant to Government Code section 3559.5 (Register 95, No. 18).

§ 599.793. Reimbursable Paid Leave of Absence—Excluded Employees.

An excluded employee is defined in section 599.615(b).

(a) An appointing power may grant a reimbursable paid leave of absence to a State employee as defined in section 3513(c) of the Government Code and to a supervisory employee as defined in section 3513(g) to work as a temporary employee of an employee organization as defined in section 3513(a) and 3527(d) in accordance with the following:

(1) The appointing power shall be reimbursed by the organization for the full amount of the excluded employee's salary, plus an additional mount equal to the full cost of State–provided employee benefits, as determined by the Department of Personnel Administration, for all time the excluded employee is off on a reimbursable paid leave of absence. Full reimbursement shall be made by the organization no later than six months after the leave terminates.

(2) An excluded employee granted a reimbursable paid leave of absence shall have no right to return earlier than the agreed–upon date without prior approval of the appointing power.

(3) A reimbursable paid leave of absence may be terminated at any time by the appointing power. The appointing power shall endeavor to give 14 calendar days' advance notice before terminating the leave.

(4) An excluded employee granted a reimbursable paid leave of absence shall have the right to return to his/her former position upon termination of the leave. The term "former position" is defined in section 18522 of the Government Code.

(5) An excluded employee granted a reimbursable paid leave of absence shall experience no loss of compensation or benefits.

(6) Whether time on a reimbursable paid leave of absence is to be credited for merit purposes shall be determined by the State Personnel Board.

(7) Excluded employees granted a reimbursable paid leave of absence shall waive any and all claims against the State for workers' compensation and industrial disability leave benefits for injuries sustained while on leave. The organization shall indemnify and hold the State harmless from any workers' compensation liability and cost of legal defense incurred in the course of such proceedings.

NOTE: Authority cited: Sections 3539.5 and 19815.4(d), Government Code. Reference: Section 19991.10, Government Code.

HISTORY

1. New section filed by the Department of Personnel Administration with Secretary of State on 12–30–87; operative 12–30–87. Submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 88, No. 7).
2. Change without regulatory effect amending section heading and text, and NOTE filed 7–17–92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 29).

§ 599.794. Personal Leave—Excluded, Special Schools Employees.

The Department of Personnel Administration, upon request of the Department of Education, may implement and/or modify personal leave programs for excluded employees at the Department of Education's Special Schools. Such leave shall be comparable to Personal Leave granted for the Special Schools' represented employees.

NOTE: Authority cited: Sections 3539.5 and 19815.4(d), Government Code.

HISTORY

1. New section filed by Department of Personnel Administration with the Secretary of State on 9–20–85; effective upon filing. Submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 85, No. 41).
2. Change without regulatory effect amending section heading and text, and NOTE filed 7–17–92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 29).

Article 14. Performance

§ 599.795. Performance Appraisal of Probationers.

A report of the probationer's performance shall be made to the employee at sufficiently frequent intervals to keep the employee adequately informed of progress on the job. A written appraisal of performance shall be made to the Director of the Department of Personnel Administration within 10 days after the end of each one–third portion of the probationary period. If the employee is rejected during the probationary period, a final report may be filed for the period not covered by previous reports. The foregoing provisions shall be construed as directory.

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19172, Government Code. Reference: Sections 19172 and 19992.2, Government Code.

HISTORY

1. New Article 14 (Sections 599.795 and 599.798) filed 9–6–83; effective thirtieth day thereafter (Register 83, No. 37).

CROSS REFERENCE: See Title 2, Division 1, Chapter 1, Subchapter 1, Sections 323–340.

2. Editorial correction of third sentence (Register 95, No. 40).

§ 599.796. Managerial Performance Appraisal System Bonuses.

The managerial bonus program prescribed below is suspended for the 1990–1991, 1991–1992, 1992–1993, 1993–1994, and 1994–1995 fiscal years for agencies that award bonuses on a fiscal year basis and for the 1991, 1992, 1993, 1994, and 1995 calendar years for agencies that award bonuses on a calendar year basis. No bonuses shall be paid based on managerial performance occurring during these years, or in any subsequent years as authorized by the Department. For other years, the managerial bonus program is governed as follows:

(a) As prescribed in this rule, State agencies may award bonuses to employees who have been designated managerial pursuant to Government Code Section 18801.1 in lieu of considering them for awards under the Merit Award Board superior accomplishment award programs. With the approval of the Department of Personnel Administration, agencies that have civil service managers in the bonus program may also include exempt appointees who perform similar managerial duties. Employees shall receive these awards based on the level of their job performance, as ascertained through the Managerial Performance Appraisal System (MPAS) described in Rule 599.796.1.

(b) Unless otherwise approved by the Department, bonuses shall be awarded by October 1 of each year for job performance during the fiscal year ending on the preceding June 30.

(c) To be eligible to participate in the bonus program, an employee must have at least 180 calendar days during the performance rating year during which he or she:

(1) Was appointed to one or more managerial or approved exempt positions; and,

(2) Performed managerial duties covered by one or more MPAS work plans. Unless otherwise approved by the Department, a State agency electing to participate in the bonus program shall include all of its eligible managers in the program.

(d) For State agencies with ten or more eligible managers, the bonus program is funded at the rate of $500 per eligible manager. Bonuses shall range from a minimum of $1,250 to a maximum of $5,000.

State agencies with fewer than ten participating managers shall follow the schedule below

Number of Eligible Managers	*Bonus Fund*	*Number of Bonuses*	*Minimum Bonus Size*
1	2,500	1	750
2	2,500	2	750
3	2,500	3	750
4	2,500	3	750
5	2,500	3	750
6	3,000	3	1,000
7	3,500	3	1,000
8	4,000	3	1,250
9	4,500	3	1,250

(e) Bonuses paid as a result of outstanding performance as documented in any Statewide appraisal system for employees designated managerial pursuant to Government Code 18801.1 will not be considered compensation for the purpose of contributions to retirement.

(f) Bonus awards may be appealed to the eligible employee's appointing power or his/her designee within 30 days of the award date. Denials of these appeals may be appealed to the Department only on the basis of fraud. These appeals must be submitted within 30 days of their denial by the appointing power.

NOTE: Authority cited: Sections 3539.5 and 20022.05(a), Government Code. Reference: Sections 3539.5, 19829 and 20022.05(a), Government Code.

HISTORY

1. New section filed by Department of Personnel Administration with the Secretary of State on 1–31–86; effective upon filing. Submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 86, No. 7).
2. Amendment filed by Department of Personnel Administration with the Secretary of State on 4–4–86; effective upon filing. Submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 86 No. 19).
3. Amendment filed by Department of Personnel Administration with the Secretary of State on 6–3–88; operative 6–3–88. Submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 88, No. 25).
4. Amendment of section filed 6–17–91; operative 6–17–91. Submitted to OAL for printing only pursuant to Government Code section 3539.5 (Register 91, No. 43).
5. Amendment of first paragraph filed 6–16–92 with Secretary of State by Department of Personnel Administration; operative 6–16–92. Submitted to OAL for printing only pursuant to Government Code section 3539.5 (Register 92, No. 25).
6. Amendment of first paragraph filed 3–30–94; operative 3–30–94. Submitted to OAL for printing only pursuant to Government Code section 3539.5 (Register 94, No. 13).
7. Amendment of first paragraph and subsections (d)–(f) filed 5–4–95; operative 7–1–95. Submitted to OAL for printing only pursuant to Government Code section 3559.5 (Register 95, No. 18).

§ 599.796.1. Managerial Merit Salary Increases.

Government Code Section 19992.14 requires that merit salary increases for managerial employees be awarded based on a system of performance appraisal reports. State agencies may meet this requirement by implementing the Managerial Performance Appraisal System (MPAS) under which:

(a) Each manager has an individual work plan specifying key performance objectives, or critical elements, that are to be accomplished by the manager during the rating year; and

(b) managers are rated outstanding, exceeds fully successful, fully successful, minimally successful, or unsatisfactory based on their accomplishment of their critical elements and their overall managerial performance; and

(c) managerial performance ratings are given at least at the midpoint and end of the rating year using forms and procedures prescribed or approved by the Department of Personnel Administration; and

(d) managers have the opportunity to review and sign their performance rating and discuss it with their appointing power, or his or her designated representative before it is filed; and

(e) merit salary increases are awarded to only those managers whose performance is at or above the fully successful level.

NOTE: Authority cited: Section 3517.8, Government Code. Reference: Sections 19992.10 and 19992.14, Government Code.

HISTORY

1. New section filed by Department of Personnel Administration with the Secretary of State on 6–3–88; operative 6–3–88. Submitted to OAL for printing only pursuant to Government Code Section 11343.8 (Register 88, No. 25).

§ 599.797. Supervisor Performance Awards.

The following award program shall be available to agencies that have not included their supervisors in the superior accomplishment award program administered by the Merit Award Board:

(a) Employees designated supervisory under section 3513(g) of the Government Code, and those, who except for being in an agency that is excluded from the definition of State employee in section 3513(c), would also be so designated, may receive an award of at least $250 but not more than $750 for outstanding job performance. Such performance must clearly exceed the standard of performance reasonably expected of the supervisory employee and represent an exceptional contribution to State government.

(b) The maximum number of $750 awards that may be made by each appointing power per fiscal year shall be determined by dividing the number of designated supervisors under the appointing power by fifty. When the result includes a fraction, the immediately higher whole number shall be the maximum.

When awards of less than $750 are made, the total dollar amount of all the awards shall not exceed the dollar amount that would have resulted from granting the maximum number of $750 awards.

(c) In the same fiscal year, no supervisory employee may receive more than one award under this rule.

(d) Appointing powers shall make these awards based on their assessment of job performance. They shall also document, in writing, the job performance supporting each award. This documentation shall be made available to the Department of Personnel Administration upon request.

(e) Bonuses paid under this rule will not be considered compensation for the purpose of contributions for retirement.

NOTE: Authority cited: Sections 3539.5, 19815.4(d) and 20022.05(a), Government Code. Reference: Sections 3539.5 and 20022.05, Government Code.

HISTORY

1. New section filed by Department of Personnel Administration with the Secretary of State on 10–26–87; operative 10–26–87. Submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 87, No. 48).
2. Amendment filed by Department of Personnel Administration with the Secretary of State on 1–24–89; operative 1–24–89. Submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 89, No. 10).
3. Change without regulatory effect amending subsections (a) and (c) and NOTE filed 7–17–92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 29).
4. Editorial correction of Reference cite (Register 95, No. 5).

§ 599.798. Performance Appraisal.

Performance appraisal shall be governed by the following:

(a) The appraisal of work performance provides recognition for effective performance and identifies aspects of performance which could be improved.

(b) Performance appraisal is a continuing responsibility of all supervisors, and supervisors shall discuss performance informally with each employee as often as necessary to ensure effective performance throughout the year.

(c) Each supervisor, as designated by the appointing power, shall make an appraisal in writing and shall discuss with the employee overall work performance at least once in each twelve calendar months following the end of the employee's probationary period for the purpose of informing the employee of the caliber of the employee's work, helping the employee recognize areas where performance could be improved and developing with the employee a plan for accomplishing such improvement.

(d) Performance appraisals shall be prepared and recorded in the manner prescribed by the Director of the Department of Personnel Administration and may be appealed to the Department only on the basis that they have been used to abuse, harass, or discriminate against an employee.

(e) Each employee shall be given a copy of the written appraisal covering the employee's own performance and is privileged to discuss it with the appointing power before it is filed.

NOTE: Authority cited: Sections 19815.4(d) and 19816, Government Code. Reference: Sections 19992.1 and 19992.2, Government Code.

HISTORY

1. Change without regulatory effect of subsection (d) filed 7–7–86; effective thirtieth day thereafter (Register 86, No. 28).

§ 599.799.

NOTE: Authority cited: Sections 3539.5, 19815.4(d) and 19816, Government Code. Reference: Sections 3539.5 and 19829, Government Code.

HISTORY

1. New section filed 1–13–94; operative 1–13–94. Submitted to OAL for printing only pursuant to Government Code section 3539.5 (Register 94, No. 4).
2. Repealer filed 5–18–94; operative 5–18–94. Submitted to OAL for printing only pursuant to Government Code section 3539.5 (Register 94, No. 20).

§ 599.799.1. Managerial Performance Appraisal and Compensation.

NOTE: Authority cited: Sections 19815.4(d) and 19820, Government Code. Reference: Sections 19826, 19829, 19832, 19992 through 19992.3 and 19992.8 through 19992.14, Government Code.

HISTORY

1. New section filed 12–6–94; operative 12–6–94 pursuant to Government Code section 11346.2(d) (Register 94, No. 49).
2. Repealer filed 1–18–2000 by the State Personnel Board (Register 2000, No. 23).
3. Memo from the State Personnel Board filed 1–25–2000 stating that the 1–18–2000 filing was made in error and that it has no legal effect (Register 2000, No. 23).
4. Repealer filed 6–6–2000; operative 7–6–2000 (Register 2000, No. 23).

§ 599.799.2. Supervisory Performance Appraisal and Compensation.

NOTE: Authority cited: Sections 19815.4(d) and 19820, Government Code. Reference: Sections 19826, 19829, 19832 and 19992 through 19992.3, Government Code.

HISTORY

1. New section filed 12–6–94; operative 12–6–94 pursuant to Government Code section 11346.2(d) (Register 94, No. 49).
2. Repealer filed 1–18–2000 by the State Personnel Board (Register 2000, No. 23).
3. Memo from the State Personnel Board filed 1–25–2000 stating that the 1–18–2000 filing was made in error and that it has no legal effect (Register 2000, No. 23).
4. Repealer filed 6–6–2000; operative 7–6–2000 (Register 2000, No. 23).

Article 15. Use of State–Owned Vehicles

§ 599.800. Definitions.

Unless the context otherwise requires, the definitions hereinafter set forth shall govern the construction of these rules.

(a) State–owned Motor Vehicle. "State–owned motor vehicle" is any motor vehicle as defined by Section 415 of the Vehicle Code, owned by the State, or any state agency.

(b) Employee. "Employee" includes all state officers and employees except: (1) incumbents of elected state offices, (2) members of the California Highway Patrol as defined in Section 2250 of the Vehicle Code.

(c) Head of Agency. "Head of the agency" or "agency head" means the head of the department or the person, board, commission, or other governing body having the appointing authority for the agency. Provided, however, that where an agency head or any member thereof is involved in a misuse, the powers and duties of that agency head or any member thereof under these regulations shall be exercised by the Director of General Services.

(d) Home. "Home" is any temporary or permanent living accommodation occupied by an employee during the course of his employment at his/her assigned headquarters.

(e) Use in Conduct of State Business. The "use of a state–owned motor vehicle in the conduct of state business" is use when driven in the performance of or necessary to or in the course of the duties of state employment and shall include the operation of state–owned or leased vehicles as commute vehicles in a carpool or vanpool program authorized by a state agency.

(f) Misappropriation for Private Us. "Misappropriation for private use" is synonymous with "misuse of a state–owned vehicle" and "misuse" as those terms are used in this article.

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19993.2, Government Code. Reference: Sections 19993.1–19993.7, Government Code.

HISTORY

1. New Article 15 (Sections 599.800–599.809) filed 9–6–83; effective thirtieth day thereafter (Register 83, No. 37).

CROSS REFERENCE: See Title 2, Division 1, Chapter 1, Subchapter 1, Sections 841–848.

2. Editorial correction of opening sentence (Register 95, No. 40).

§ 599.801. State–Owned Vehicles Operated in a Commute Program.

(a) State–owned or leased automobiles and passenger vans may be used to provide commute transportation to state employees if such use does not interfere with the prescribed use of the vehicles.

(b) Commute operation of the vehicles used in the program shall be fully reimbursed.

(1) Each agency shall determine the cost of operation of its commute vehicles.

(2) Participating employees shall be charged a monthly fee which will reimburse the agency for the cost of operating the vehicle in the commute program.

(A) Fees may be collected in advance by payroll deduction in accordance with Section 1156(e) of the Payroll Procedures Manual.

(B) Agencies may adopt fee collection methods that best meet their needs.

(3) Each agency shall maintain records to demonstrate that the commute program is self–supporting.

(c) Employees may be authorized to participate in the commute program when the following criteria are met:

(1) Participants shall be selected from volunteers who will most effectively contribute to the goals of the program: conservation of fuel, improvement of air quality and more effective use of existing streets, highways and parking facilities.

(2) Drivers shall be assigned by the agency.

(A) All drivers must possess a valid non–probationary California license appropriate for the size of the vehicle which they will operate.

(B) All drivers shall have a history of safe driving verified by an analysis of their driving records by the Department of Motor Vehicles.

1. Employees with a negligent operator point count or 2 point conviction in the past 12 months as defined in the C.V.C. Section 12810 shall not be allowed to drive in this program.

(C) All drivers will have participated in the Department of General Services, Insurance Office, defensive driver training program within a period of three years previous to operating vehicles in this program.

(D) No one other than the assigned or back–up drivers shall operate the commute vehicles except in an emergency.

(3) Agencies may institute whatever additional controls they deem necessary that do not conflict with these rules.

(d) The agency shall be responsible for all maintenance, including gasoline.

(1) Emergency repairs and purchases paid for by the driver or passengers may be allowed if substantiated by voucher or receipt.

(e) The vehicle shall be parked overnight and on weekends at the home of the driver.

(1) Accurate mileage shall be determined for the most direct route that reasonably accommodates all passengers.

(2) The mileage of each commute trip shall be recorded in the vehicle's log.

(3) All definitions and provisions of Article 15 shall apply.

(f) Insurance coverage of the state–owned or leased vehicles used in the commute program will be provided by the state in accordance with Government Code Section 11007.4.

(1) Individual coverage to drivers and passengers will be provided by an extension of workers' compensation which includes payment of medical treatment for employees; no special automobile medical payments insurance will be provided by the state.

(2) Accidents and claims involving pool vehicles will be reported and administered in accordance with established procedures.

(g) An annual accounting will be made to the Department of Personnel Administration by each state agency participating in this program on a fiscal year basis.

(1) Complete information including the number of vehicles, number of participating employees, cost of operation, total fees received, accidents, savings in parking charges and any other data requested by the Department or deemed pertinent by the agency shall be submitted.

(2) All reports shall be submitted by September 1 of each year to the Department of Personnel Administration.

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19993.2, Government Code. Reference: Sections 19993.1–19993.6, Government Code.

§ 599.802. Misuse.

Misuse of a state–owned vehicle includes:

(a) When driven or used otherwise than in the conduct of state business.

(b) When driven to or from the employee's home or the vicinity thereof after completion of the employee's workday, unless:

(1) departing upon or returning from an official trip away from the employee's headquarters under circumstances which make it impracticable for the employee to use other means of transportation, or where the employee's home is reasonably enroute to or from his headquarters or other place where his/her is to commence work the following workday.

(2) the vehicle is to be used by him/her in the conduct of state business on the same day or before his/her usual working hours on his/her next succeeding work day and where such later use has been authorized in writing in advance by his/her agency head or his/her duly authorized representative. The mere possibility that vehicle may be used outside of business hours by an employee "on call" does not qualify under this subsection.

(3) no state garage facility is available.

(4) the employee is required to respond to urgency or emergency calls outside of his/her regular working hours, reasonably requiring the use of a state–owned vehicle.

(5) the employee is required to work unplanned overtime with the result that no other practical means of getting home is available to the employee.

(c) Carrying in the vehicle any persons other than those directly involved with official state business, except with the approval of the employee's immediate supervisor for each trip.

(d) Using the vehicle for other than those personal needs directly essential to carrying out the official business such as obtaining food and lodging.

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19993.2, Government Code. Reference: Section 19993.2(a), Government Code.

§ 599.803. Actual Costs and Liability Therefore.

(a) Liability for Actual Costs. An employee shall be liable to the State for the actual costs to the State attributable to his/her misuse of a state–owned motor vehicle. Where, however, and to the extent that a superior directs the misuse, the superior and not the subordinate shall be liable.

(b) Elements of Actual Costs. Actual costs shall include:

(1) Expense of Operation. Expense of operation of a state–owned vehicle for the distance traveled during such misuse. Where the misuse amounts to an unreasonable deviation from the shortest practical route the operating expense shall be computed on a mileage basis for the distance traveled in excess of the shortest practical route.

(2) Property Damage. Any and all property damage to the state–owned motor vehicle, and other state property, proximately resulting from such misuse. Provided further, that a credit shall be allowed the employee equal to any amount paid to the State by a third party.

(3) Reimbursement to State. The amount of any judgment or claim not covered by insurance that the State pays by reason of the death, injury, or damage to persons or property arising out of misuse of a state–owned vehicle, including interest at the legal rate accruing from the time of payment by the State.

(c) Right of Subrogation. In no event shall these regulations be construed as conferring a right of subrogation on the part of insurance carriers for state vehicles where no such right existed at the time of the adoption of these rules.

(d) Third Parties. These regulations are intended to provide rules of use for state–owned vehicles as between the State and its officers and em-

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ployees only, and shall not affect in any way rights and obligations of third parties, including insurance carriers for the state-owned vehicles.

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19993.2, Government Code. Reference: Section 19993.2(b), Government Code.

§ 599.804. Determination of Misuse and Actual Costs.

(a) Determination of Costs. The head of each agency shall determine under the provisions of these regulations the amount and enforce the collection of actual costs to the State attributable to misuse of state-owned motor vehicles by employees of his/her agency. Money collected from the employee shall be deposited to the credit of the fund supporting operation of the vehicle improperly used.

(b) Investigation of Misuse and Actual Costs. Within thirty (30) calendar days after an agency has reasonable cause to believe that misuse of a state-owned motor vehicle by one of its employees has occurred or has been notified by the Department of General Services of such alleged misuse, a representative designated by the agency head shall, without a formal hearing, initiate and complete a preliminary investigation with a view to determining the following:

(1) Whether a misuse occurred.

(2) The employee responsible for such misuse.

(3) Whether punitive action should be taken and if so the action recommended.

(4) The actual costs to the state attributable to such misuse, unless the same are not reasonably ascertainable at the time of the completion of the preliminary investigation in which event they shall be determined in accordance with Section 599.805.

(c) Rights of Employee During Investigation. Any employee involved in the reported misuse, shall, during the course of the investigation, be given an opportunity to give an explanation, and shall be fully advised of the allegations and of the facts developed by the investigation.

(d) Notice to Employee of Agency's Preliminary Decision. Within five (5) days after concluding the investigation, the representative designated by the agency head shall set down his preliminary decision on a form to be furnished by the Department of General Services, together with a report of his investigation, and serve a copy thereof on the employee, and shall at the same time send a copy thereof to the agency head and to the Department of General Services. Where the employee named in the decision is exempt from civil service, the Department of Personnel Administration shall also be sent a copy of the decision and report of investigation.

(e) Appeal to Head of Agency. The employee shall have ten (10) days from service within which to file a written request with the head of the agency to review the decision except that if punitive action is taken the ten (10) day appeal period and the time for review provided in Section 599.804(f) below shall not commence until the punitive action is final.

(f) Review by Head of Agency. Where such a request is filed, the agency head shall review the preliminary decision or, in the absence of any request, he may upon his own motion review it. The review may be conducted either with or without a hearing. The agency head shall either approve, reverse, or modify the preliminary decision. The action of the head of the agency shall be set forth in writing and a copy served on the employee. This shall constitute the final decision of the agency and become effective thirty (30) days after it is served upon the employee.

(g) Effective Date When Preliminary Decision is Not Reviewed. Where the preliminary decision is not reviewed under the foregoing sections and no punitive action is taken, it shall constitute the final decision of the agency and become effective thirty (30) days after it is served upon the employee.

(h) Service of Final Decision of the Agency. The Department of General Services shall be sent a copy of the decision within ten (10) days after it becomes final. Where the employee named in the decision is exempt from civil service, the Department of Personnel Administration shall also be sent a copy of the decision. A copy of the final decision shall be served on the employee.

(i) Consolidation of Separate Charges of Misuse. Where there are two or more independent charges of misuse involving the same employee, such charges may be consolidated under this section at any time prior to the rendition of the agency's final decision.

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19993.2, Government Code. Reference: Sections 19993.1-19993.7, Government Code.

§ 599.805. Supplemental Determination of Actual Costs. Procedure for Supplemental Determination of Actual Costs.

Where the actual costs are for any reason not ascertained by the preliminary investigation the amount thereof shall be ascertained in a new proceeding following the same procedure, including the right of redress to the agency head as provided herein, unless there has been a final determination that no misuse occurred.

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19993.2, Government Code. Reference: Section 19993.2(a), Government Code.

§ 599.806. Penalty for Misuse.

(a) Reimbursement made to the state by an employee for the actual costs to the state attributable to misuse of a state-owned vehicle shall not be considered a penalty for such misuse.

(b) Appropriate punitive action for misuse of a state-owned vehicle should be taken by the employee's appointing power in accordance with Title 2, Division 5, Part 2, Chapter 8, Article 3 of the Government Code. When punitive action is taken collection of actual costs for misuse as required in Section 599.804 shall not be made until the punitive action is final.

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19993.2, Government Code. Reference: Section 19993.2(b), Government Code.

§ 599.807. Automobile Travel Logs.

Each state agency shall maintain the following records for state-owned automobiles under its control. The term "automobile" for the purpose of Sections 599.807 and 599.808 includes automobiles as defined by the Department of General Services in the State Administrative Manual:

(a) An automobile travel log for each automobile in a form approved by the Department of General Services. Such form shall include, among other information, a record of daily mileage traveled, date and time of travel, itinerary, and information regarding overnight storage and shall identify the driver. The record shall be completed on a daily basis.

(b) Such logs shall be retained by the agencies owning automobiles and shall be available for review by the Department of General Services on request. The retention period for such logs shall be the current fiscal year and the preceding fiscal year.

(c) Anything to the contrary notwithstanding, the Department of General Services, in order that misuse may be discovered with a minimum of record keeping, may from time to time determine that such reports or portions thereof are unnecessary as to certain vehicles, or vehicles subject to specialized uses, and may permit elimination or simplification of such records or portions thereof.

NOTE: Authority cited: Sections 19815.4(d) and 19816, Government Code. Reference: Section 19993.2, Government Code.

§ 599.808. Storage of State-Owned Motor Vehicles.

(a) The Director of General Services shall allocate available storage space and shall notify, at what intervals he/she deems necessary, each state agency of the number and location of Department of General Services garage and parking facilities allocated to that agency.

(b) Each state agency shall assign to the state-owned vehicles under its control all vehicle storage or parking space under its jurisdiction, or allocated to it by the Department of General Services. Each agency will report on all passenger vehicle storage space under its jurisdiction to the Department of General Services following procedures prescribed by General Services.

(c) Garage charges may be allowed for rental space for monthly storage of a state-owned vehicle in the vicinity of an employee's home. Garage charges shall not be allowed where state-owned vehicles are kept at the home of a state officer or employee, unless the officer or employee incurs a separate charge for storage.

(d) When a state–owned vehicle is to be stored frequently at or in the vicinity of an employee's home, regardless of the reason, a permit must be obtained in advance from his/her department. The permit must be signed by the department head, a deputy, or the chief administrative officer. The Department of General Services will prescribe the form and procedures relating to such permits. Permits will be available for review by the Department of General Services. At the discretion of General Services, any agency may be required to submit permits to it for final approval. For the purpose of enforcing this rule, "frequently" is defined as storing a state–owned vehicle at an employee's home, or in the vicinity thereof, for more than 72 nights over a 12–month period or more than 36 nights over any three–month period.

NOTE: Authority cited: Sections 19815.4(d) and 19816, Government Code. Reference: Section 19993.2, Government Code.

§ 599.809. Definition of Passenger Type Motor Vehicles of the Light Class.

A passenger type motor vehicle is defined as being of the light class provided it has less than 3.1 cubic meters (110 cubic feet) of passenger and luggage volume.

NOTE: Authority cited: Sections 19815.4(d) and 19816, Government Code. Reference: Section 22, Budget Act.

Article 16. Classification

§ 599.810. Out–of–Class Assignments—Excluded Employees.

(a) For the purposes of this section:

(1) "Excluded employee" means an employee as defined in section 3527(b) of the Government Code (Ralph C. Dills Act) except those excluded employees who are designated managerial pursuant to section 18801.1 of the Government Code.

(2) "Out–of–class work" is defined as, more than 50 percent of the time, performing the full range of duties and responsibilities allocated to an existing class and not allocated to the class in which the person has a current, legal appointment.

(3) A higher classification is one with a salary range maximum that is any amount higher than the salary range maximum of the classification to which the employee is appointed.

(b) As specified in (d), excluded employees may be compensated for performing duties of a higher classification provided that:

(1) The assignment is made in advance in writing and the excluded employee is given a copy of the assignment; and,

(2) The appointing power certifies that funds are available within its current budget; and,

(3) The duties performed by the excluded employee are not described in a training and development assignment or by the specification for the class to which the excluded employee is appointed and, further, taken as a whole are fully consistent with the types of jobs described in the specification for the higher classification; and

(4) The excluded employee does not perform such duties for more than 120 calendar days in a fiscal year, except as provided in (e).

(c) There shall be no compensation under this rule for assignments that last for 15 consecutive working days or less.

(d) An excluded employee performing in a higher class for more than 15 consecutive working days shall receive the rate of pay the excluded employee would receive if appointed to the higher class for the entire duration of the assignment, not to exceed one year.

(e) An excluded employee may be assigned out–of–class work for more than 120 calendar days during any 12–month period only if the appointing power or his or her designee files a written statement with the Department of Personnel Administration certifying that the additional out–of–class work is required to meet a need that cannot be met through other administrative or civil service alternatives. Such assignments shall be subject to termination by the Director upon his or her finding that reasonable alternatives do exist.

(f) Pay differentials received under the rule shall not be part of an excluded employee's base pay for the purpose of merit salary adjustments or other salary transactions related to subsequent appointments and separations.

(g) Paid time off shall not break the continuity of work in a higher class for the purposes of this rule.

NOTE: Authority cited: Sections 3539.5, 19815.4(d), 19816 and 19820, Government Code. Reference: Section 3539.5, Government Code.

HISTORY

1. New section filed by Department of Personnel Administration with the Secretary of State on 5–23–86; effective upon filing. Submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 86, No. 26).
2. Change without regulatory effect amending section heading and text, and NOTE filed 7–17–92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 29).
3. Amendment filed 5–12–98; operative 5–12–98. Submitted to OAL for printing only pursuant to Government Code section 3539.5 (Register 98, No. 20).

Article 17. Training

§ 599.815. Purpose.

This article provides the basic structure for a State training program to promote a capable, efficient and service–oriented workforce by developing employees' skills and abilities through effective, quality training programs. If the provisions of this article are in conflict with the provisions of a memorandum of understanding, the memorandum of understanding shall be controlling.

NOTE: Authority cited: Sections 19815.4(d) and 19995.1, Government Code. Reference: Sections 19995 and 19995.1, Government Code.

HISTORY

1. New Article 17 (Sections 599.815–599.821, not consecutive) filed 6–28–84; designated effective 7–1–84 pursuant to Government Code Section 11346.2(d) (Register 84, No. 26).
2. Amendment of section heading and section filed 4–24–98; operative 5–24–98 (Register 98, No. 17).

§ 599.817. Definitions.

(a) Training. Training is the process whereby State employees, either individually or in groups, participate in a program of instruction (with lesson plan, instructor, or instructional device) to acquire skills and knowledge for their current or future job performance.

(b) Job–Required Training. Job–required training is designed to assure adequate performance in a current assignment. This includes orientation training, training made necessary by new assignments or new technology, refresher training for the maintenance of ongoing programs, safety training, and training mandated by law or other State authority.

(c) Job–Related Training. Job–related training is designed to increase efficiency or effectiveness and improve performance above the acceptable level of competency established for a specific job assignment.

(d) Upward Mobility Training. Upward mobility training is designed to provide career movement opportunity for employees within classifications designated as upward mobility per Government Code Sections 19400 and 19401.

(e) Career–Related Training. Career–related training is designed to assist in the development of career potential and is intended to help provide an opportunity for self–development while also assisting in the achievement of a department's or the State's mission. Career–related training may be unrelated to a current job assignment.

(f) Individual Development Plan. An Individual Development Plan is any written plan describing training or development programs in which the employee intends to participate and which is approved by the employee's supervisor.

NOTE: Authority cited: Sections 19815.4(d) and 19995.1, Government Code. Reference: Sections 19404(c), 19995 and 19995.1, Government Code.

HISTORY

1. Amendment of subsection (b)(3) filed 7–8–87; operative 8–7–87 (Register 87, No.29).
2. Amendment of subsection (c) and new subsection (d) filed 8–28–89; operative 9–27–89 (Register 89, No. 36).
3. Editorial correction of subsection (c)(1) (Register 95, No. 40).

4. Amendment filed 4–24–98; operative 5–24–98 (Register 98, No. 17).

§ 599.818. Training Policy, Plan and Evaluation.

(a) To ensure that training resources are utilized effectively, the appointing power shall establish a training policy, which shall include all categories of training as defined in Section 599.817, and shall specify the amount of payment and release time allowed for training.

(b) The appointing power shall develop an annual training plan which identifies organizational problems and goals that should be resolved or accomplished through training, appropriate training methods to assure program effectiveness and efficiency, and training target populations to be served by training programs. The training plan should also estimate training costs and establish criteria for evaluating training programs.

(c) The appointing power shall evaluate training programs to determine if training activities are meeting the needs of the organization and its employees and training resources are properly allocated. In addition, each specific training program shall be evaluated to ensure that the course content supports the course objectives and that the training is appropriate for the intended purpose.

(d) Training policies, plans and evaluation methods may be reviewed by the Department to provide assistance and guidance to our customers and to resolve conflicts which may occur.

NOTE: Authority cited: Sections 19815.4(d) and 19995.1, Government Code. Reference: Sections 19995 and 19995.1, Government Code.

HISTORY

1. Repealer and new section filed 4–24–98; operative 5–24–98 (Register 98, No. 17). For prior history, see Register 89, No. 36.

§ 599.819. Reimbursement for Training Expenses.

(a) In assigning individuals to attend training, the appointing power shall establish policies regarding reimbursement for training expenses. Such policies must provide for the following:

(1) When participation is identified by the appointing power as job–required, full reimbursement shall be provided for tuition and other necessary expenses, including the allocation of time with pay.

(2) When participation is identified by the appointing power as job–related, full reimbursement may be provided for tuition and other necessary expenses, including the allocation of time with pay.

(3) When an employee participates in career–related or upward mobility training, with the approval of the appointing power, reimbursement may be for tuition, books, and supplies. Reimbursement for travel and per diem shall not be allowed. Reimbursement for such training may be made only if the employee has successfully completed all course requirements as specified by the training provider.

(4) For full–time training of more than 60 days, the appointing power may require the employee to agree in writing to reimburse the State for tuition and other expenses paid by the State if, after completion of the training assignment, the employee does not continue employment in State service for a period of six months or twice the period of training, whichever is greater. Such reimbursement shall be made within two years after separation from State service and shall be for an amount proportionate to the specified period of service not completed.

(b) If the provisions of this rule are in conflict with specific training reimbursement provisions contained in a memorandum of understanding, the memorandum of understanding shall be controlling.

NOTE: Authority cited: Sections 19815.4(d) and 19995.1, Government Code. Reference: Sections 19995 and 19995.1, Government Code.

HISTORY

1. Repealer of former section 599.819 and renumbering of former section 599.823 as new section 599.819, including amendment of subsections (a)(4) and (b), filed 4–24–98; operative 5–24–98 (Register 98, No. 17).

§ 599.821. Training Evaluation.

NOTE: Authority cited. Sections 19815.4(d) and 19995.1, Government Code. Reference: Sections 19995 and 19995.1, Government Code.

HISTORY

1. Repealer filed 4–24–98; operative 5–24–98 (Register 98, No. 17).

§ 599.822. Allocation of Resources.

NOTE: Authority cited: Section 19815.4(d), Government Code. Reference: Sections 19995 and 19995.1, Government Code.

HISTORY

1. New section filed 7–8–87; operative 8–7–87 (Register 87, No. 29).
2. Repealer filed 4–24–98; operative 5–24–98 (Register 98, No. 17).

§ 599.823. Reimbursement for Training Expenses.

NOTE: Authority cited: Section 19815.4(d) and 19995.1, Government Code. Reference: Sections 19404(c), 19995 and 19995.1, Government Code.

HISTORY

1. New section filed 8–28–89; operative 9–27–89 (Register 89, No. 36).
2. Editorial correction of subsection (a)(3) (Register 95, No. 5).
3. Renumbering and amendment of former section 599.823 as new section 599.819 filed 4–24–98; operative 5–24–98 (Register 98, No. 17).

§ 599.824. Conditions and Restrictions. Out–Service Training.

NOTE: Authority cited: Section 19815.4(d) and 19995.1, Government Code. Reference: Sections 19995 and 19995.1, Government Code.

HISTORY

1. New section filed 7–8–87; operative 8–7–87 (Register 87, No. 29).
2. Repealer filed 4–24–98; operative 5–24–98 (Register 98, No. 17).

Article 18. Separations from Service

§ 599.825. Resignation from State Service.

An employee may resign from state service by submitting a written resignation to the appointing power. A copy of such resignation shall immediately be filed by the appointing power in a manner prescribed by the Department of Personnel Administration.

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19996.1, Government Code. Reference: Sections 19996, 19996.1 and 19996.2, Government Code.

HISTORY

1. New Article 18 (Sections 599.825 and 599.827) filed 9–6–83; effective thirtieth day thereafter (Register 83, No. 37).

CROSS REFERENCE: See Title 2, Division 1, Chapter 1, Subchapter 1, Sections 445–448.

§ 599.826. Temporary and Permanent Separations.

Temporary separations from state service shall include all types of leave of absence including leave under Section 599.785, military leave, suspension, termination for medical reasons, termination of permanent or probationary employee by layoff, termination by displacement, and disability retirement. Permanent separations from state service shall include dismissal; resignation; automatic resignation (AWOL); rejection during probationary period; termination for failure to meet conditions of employment; termination of limited–term, temporary authorization, emergency, Career Executive Assignment, or exempt appointment; and service retirement.

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19996.1, Government Code. Reference: Sections 19991.1, 19991.8 and 19996, Government Code.

HISTORY

1. New section filed 2–9–84 (corrected copy refiled 2–27–84); effective thirtieth day thereafter (Register 84, No. 8).
2. Editorial correction of HISTORY NOTES printed in error in Register 84, Nos. 8 and 12 (Register 84, No. 15).

§ 599.827. Continuity of Intermittent Employment.

An intermittent employee whose continuity of employment in the State service is interrupted by a nonwork period that is not covered by paid absence or formal leave of absence without pay, or other temporary separation immediately following the work period and that extends longer than one year shall be paid a lump sum payment for all accumulated vacation or overtime credits as though separated from State service and shall lose all accumulated sick leave and seniority credits.

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19996.1, Government Code. Reference: Section 19100, Government Code.

§ 599.828. Automatic Resignation of Intermittent Employees.

In addition to the provisions of Government Code Section 19996.2, an intermittent employee who waives three requests by the employing de-

partment to report for work may be automatically searated from the intermittent appointment, provided that no waiver shall be counted if the employee was unable to come to work due to illness or other good reason (i.e., a reason that is acceptable to the appointing power).

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19996.1, Government Code. Reference: Section 19100, Government Code.

HISTORY

1. New section filed 2–9–84 (corrected copy refiled 2–27–84); effective thirtieth day thereafter (Register 84, No. 8).
2. Editorial correction of HISTORY NOTES printed in error in Register 84, Nos. 8 and 12 (Register 84, No. 15).

Article 19. Reduced Worktime

§ 599.830. Scope of Article.

This article shall apply to the Reduced Worktime Act. Reduced worktime arrangements include:

(a) Job sharing;

(b) Fewer hours of work per day;

(c) Fewer days of work per week;

(d) Supplemental time off as defined in Section 599.831;

(e) Other arrangements as agreed between the employee and appointing power, and approved by the Department of Personnel Administration.

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19996.27, Government Code. Reference: Section 19996.20, Government Code.

HISTORY

1. New section filed 2–9–84 (corrected copy refiled 2–27–84); effective thirtieth day thereafter (Register 84, No. 8).
2. Editorial correction of HISTORY NOTES printed in error in Register 84, Nos. 8 and 12 (Register 84, No. 15).

§ 599.831. Supplemental Time Off.

(a) A full–time civil service employee may request supplemental time off, during a term not to exceed 12 consecutive monthly pay periods in exchange for a commensurate reduction in pay. If the appointing power determines the request is feasible pursuant to Section 599.833 the employee and appointing power shall enter into an agreement, stating the specific time or times that the supplemental time off may be used. The 12 monthly pay period term shall take effect at the beginning of a pay period.

(b) During the term of agreement, the participating employee's pay shall be reduced by a means of a fractional time base. Pay for hours worked, which are in excess of those required for the fractional time base elected but not in excess of those specified in the work week group for the position or classification, shall purchase supplemental time off credit. The Director of the Department of Personnel Administration shall approve which fractional time base options shall be made available for employee request.

(c) Supplemental time off credit may accumulate from month to month during the term of the agreement.

(d) Supplemental time off may be utilized in the pay period in which it is accrued.

(e) All supplemental time off shall be used as agreed. If supplemental time off cannot be used during the term of the agreement, then payment shall be made at straight time during the pay period immediately following the termination of the agreement, or the employee shall be credited with an equivalent amount of compensating time off, according to the discretion of the appointing power. When payment is by cash it shall constitute payment in full for services rendered and no retroactive adjustment of pro rata benefits or service credit shall be made. An employee who separates from service without fault is entitled to a lump sum payment as of the time of separation for any accumulated supplemental time off. Such sum shall be computed by projecting the accumulated time on a calendar basis as provided in Government Code Section 19839(a). An employee who separates from service with fault is entitled to a lump sum payment as of the time of separation at straight time for any accumulated supplemental time off. The computation of such sum shall be based on actual accumulated time without projection as provided in Government Code Section 19839(b).

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19996.27, Government Code.

HISTORY

1. New section filed 2–9–84 (corrected copy refiled 2–27–84); effective thirtieth day thereafter (Register 84, No. 8).
2. Editorial correction of HISTORY NOTES printed in error in Register 84, Nos. 8 and 12 (Register 84, No. 15).

§ 599.832. Rights of Employees.

An employee shall not be coerced by the appointing power, a supervisor or another employee to reduce his or her worktime involuntarily; and an employee shall not be excluded from participation in reduced worktime when the conditions outlined in Government Code Section 19996.21 and Section 599.833 are met. Employees who have reduced their worktime shall not be assigned workload or mandatory overtime that is excessive in comparison to that assigned to other employees performing similar work under the same appointing power. Violation of any of the provisions of this Rule may be the basis for a grievance under Department of Personnel Administration Rules 599.855–599.872 or the applicable provisions of a Memorandum of Understanding.

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19996.27, Government Code. Reference: Sections 19996.22 and 19996.25, Government Code.

HISTORY

1. New section filed 2–9–84 (corrected copy refiled 2–27–84); effective thirtieth day thereafter (Register 84, No. 8).
2. Editorial correction of HISTORY NOTES printed in error in Register 84, Nos. 8 and 12 (Register 84, No. 15).

§ 599.833. Feasibility Determination.

When an employee requests reduced worktime, the appointing power shall determine if it is feasible for the new position to be a reduced worktime position.

Feasibility determination shall include consideration of, but not be limited to, cost, levels of service and the need to maintain adequate supervision.

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19996.27, Government Code. Reference: Section 19996.21, Government Code.

HISTORY

1. New section filed 2–9–84; effective thirtieth day thereafter (Register 84, No. 8).
2. New section refiled 2–27–84 to correct inadvertent omission of text from 2–9–84 order; designated effective 3–10–84 (Register 84, No. 8).
3. Editorial correction of HISTORY NOTE No. 2 filed 3–9–84 (Register 84, No. 12).

§ 599.834. Personnel Reduction.

(a) Whenever the appointing power of a State department anticipates a personnel reduction equivalent to one percent or more of the department's full–time equivalent positions, the department shall so inform the Director of the Department of Personnel Administration and provide the facts upon which such anticipation is based.

(b) The Director shall thereafter make a determination as to whether the anticipated reduction meets the requirements of Government Code Section 19996.21(b). If the Director so determines, he/she shall direct the department to conduct a survey of all of its permanent full–time employees to determine the extent of the desire of such employees to participate in a voluntary reduced worktime program. The Director may also direct a department to conduct such a survey if the Director independently determines that the department is likely to experience a one percent personnel reduction.

(c) All such surveys shall use forms prescribed by the Director and be completed within 45 days, unless the Director determines that a shorter time is required in order to preserve employment opportunities. The department shall transmit the results of the survey to the Director of the Department of Personnel Administration.

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19996.27, Government Code. Reference: Section 19996.21(b), Government Code.

HISTORY

1. New section filed 2–9–84 (corrected copy refiled 2–27–84); effective thirtieth day thereafter (Register 84, No. 8).
2. Editorial correction of HISTORY NOTES printed in error in Register 84, Nos. 8 and 12 (Register 84, No. 15).

§ 599.835. Layoff of Reduced Worktime Employees.

When layoff occurs, reduced worktime employees shall not be routinely subject to layoff ahead of full–time employees. Layoff for such employees shall proceed as prescribed by Government Code Sections 19997–19997.14, Department of Personnel Administration Rules 599.840–599.850 and other related laws and Department rules.

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19996.27, Government Code. Reference: Section 19996.24, Government Code.

HISTORY

1. New section filed 2–9–84 (corrected copy refiled 2–27–84); effective thirtieth day thereafter (Register 84, No. 8).
2. Editorial correction of HISTORY NOTES printed in error in Register 84, Nos. 8 and 12 (Register 84, No. 15).

§ 599.836. Return to Full–Time Work.

This section governs the return to full–time work of employees who have voluntarily reduced their worktime pursuant to Government Code Section 19996.21.

(a) Upon completion of the term of a supplemental time off agreement, the employee shall be returned to full–time employment unless the employee and appointing power mutually agree to begin a new term. Such return shall be provided irrespective of any waiver of return rights under subsection (b)(1).

(b) The following provisions apply to all reduced worktime employees returning to full–time work except for those employees covered by subsection (a). This includes employees returning to full–time work from a supplemental time off arrangement prior to completion of the term.

(1) When an employee requests return to full–time work, the employee must be offered full–time employment in available departmental vacancies in the class and location in which the employee is serving at the time of the request. Vacant positions in that class and location may not be filled by transfers from within or outside the department; appointments from employment lists, including reemployment lists; or by permissive reinstatement, unless such employees have refused the position. At the discretion of the employee and with the approval of the appointing power, positions in different locations and classes for which the employee is eligible may be offered in lieu of a position in the same class and location.

Employees who refuse three offers of full–time work, as described in the preceding paragraph, may be considered to have waived their right to full–time employment offers for six months. Within each class and location, return to full–time work requests shall be considered on a first–come, first–served basis, with the requests of employees who had previously refused three offers being considered as new requests. Exceptions to this order of return may be made where warranted by instances of extreme employee hardship.

As used in this section, the same location shall be any work location that the employee could reasonably accept without a change in residence.

(2) At any time the department makes a determination that it is not administratively feasible to continue a position as a reduced worktime position, the appointing power may require the employee to return to full–time work. In determining which of a group of employees to recall to full–time work, departments may consider seniority, program needs, affirmative action and/or individual employee hardship. The method used in each such instance shall be clearly identified and shall be uniformly applied to all affected employees.

The appointing power must provide the employee with written notice of the required return at least 30 days prior to the date the employee is to report to work full time; except that in an emergency, such as flood, fire, or other extreme emergency, the appointing power may require the employee to work full time without prior notice for the duration of such emergency.

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19996.27, Government Code. Reference: Section 19996.24, Government Code.

HISTORY

1. New section filed 2–9–84 (corrected copy refiled 2–27–84); effective thirtieth day thereafter (Register 84, No. 8).
2. Editorial correction of HISTORY NOTES printed in error in Register 84, Nos. 8 and 12 (Register 84, No. 15).
3. Editorial correction of printing error in HISTORY 2. (Register 92, No. 29).

§ 599.837. Reporting Programs.

State agencies shall report to the Department of Personnel Administration on their reduced worktime programs from time to time as required by the Director.

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19996.27, Government Code. Reference: Sections 19815.4(d) and 19996.27, Government Code.

HISTORY

1. New section filed 2–9–84 (corrected copy refiled 2–27–84); effective thirtieth day thereafter (Register 84, No. 8).
2. Editorial correction of HISTORY NOTES printed in error in Register 84, Nos. 8 and 12 (Register 84, No. 15).

Article 20. Layoff and Demotion

§ 599.840. Seniority Credit.

Service shall be accumulated by qualifying pay period as defined in Section 599.608.

(a) Seniority credit in a class that has been abolished, combined, divided or otherwise altered shall be granted at the rate of one point for each qualifying pay period.

(b) Service that is part time shall receive seniority credit at the fraction of the full–time rate that corresponds to the employee's time base. In order for a part–time month of service to qualify for fractional seniority credit an employee working in an agency in which the full–time workweek is 40 hours, must work at least that fraction of 88 hours that corresponds to the employee's time base. This standard shall be proportionately adjusted for service in agencies in which the full–time workweek is other than 40 hours.

(c) Only that service under emergency appointment which was followed by other service without a break shall receive seniority credit.

NOTE: Authority cited: Sections 19815.4(d) and 19816, Government Code. Reference: Sections 19997, 19997.3 and 19997.4, Government Code.

HISTORY

1. New Article 20 (Sections 599.840–599.849, not consecutive) filed 9–6–83; effective thirtieth day thereafter (Register 83, No. 37).

CROSS REFERENCE: See Title 2, Division 1, Chapter 1, Subchapter 1, Sections 254.1 and 450–460.

§ 599.841. Service Qualifying for Seniority.

Service qualifying for seniority pursuant to Government Code Section 19997.4 shall be the types of compensated service described under Subsections a, b, c, d, e, f, g, h, i, k, l and m of Section 4, Article VII, of the State Constitution; provided that California State University system student employment that is not qualifying for benefits, or student employment in the University of California system that is less than one–half time, shall not be qualifying for seniority credit; and, provided further, that service under Subsection k shall be qualifying only when military service is in connection with employment by the State Military Department.

Unless otherwise provided by the Department of Personnel Administration, only that exempt service which can be fully verified for seniority purposes from official records shall be qualifying for seniority.

NOTE: Authority cited: Sections 19815.4(d) and 19816, Government Code. Reference: Section 19997.4, Government Code.

§ 599.842. Crediting Services for Seniority.

For the purposes of crediting service for seniority, full–time service shall be the work schedule required by the appointing power for compensation at a full–time rate. Where there is no established fulltime work schedule, the Director of the Department of Personnel Administration shall determine the amount of seniority credit to be granted.

NOTE: Authority cited: Sections 19815.4(d) and 19816, Government Code. Reference: Sections 19997, 19997.3 and 19997.4, Government Code.

§ 599.843. Non–Civil–Service Employees.

No state civil service employee shall be laid off from any position while any employee serving under temporary or limited term appointment is retained in any position of the same class in the unit affected by the layoff.

NOTE: Authority cited: Sections 19815.4(d) and 19816, Government Code. Reference: Section 19997.3, Government Code.

§ 599.844. Probationer.

No distinction shall be made between a probationer and a permanent employee when making layoffs.

NOTE: Authority cited: Sections 19815.4(d) and 19816, Government Code. Reference: Section 19997.3, Government Code.

§ 599.845. Procedure.

In making layoffs, the appointing power shall first communicate with the Director of the Department of Personnel Administration regarding the designation of the subdivision, if any, to be considered and submit a list of employees in the unit of layoff who are in the class or classes of layoff. The Director shall compute in the manner prescribed by the Government Code a layoff list showing the score of each employee. After receiving this list the appointing power shall notify the employee or employees to be laid off. An employee compensated on a monthly basis shall be notified in writing at least 30 days prior to the date of layoff and the notice shall contain the reason therefor. The appointing power shall immediately thereafter render a written report to the Director on such form as may be prescribed, such report to state the name or names of the employees so laid off and the reasons therefor.

When the layoff is to be made in a class designated by the Director of the Department of Personnel Administration as a professional, scientific, administrative, management or executive class the appointing power shall also submit a report which rates the employees' current performance on the form and in the manner prescribed by the Director. Such form shall make provision for rating an employee in one of the following categories: entirely satisfactory, improvement needed, or unsatisfactory. In computing layoff scores an employee shall have deducted from the score twelve (12) points for a rating of improvement needed and thirty–six (36) points for a rating of unsatisfactory. The appointing power shall give the employee a copy of this report and inform the employee of the right to appeal this rating to the Department of Personnel Administration on the grounds that it was not made in good faith or was otherwise improper. Such an appeal shall be filed under the provisions of Section 599.903 within 10 days from the date the employee received a copy of the report. The filing of such an appeal shall not delay the effective date of the layoff. Ratings after they become final under this section shall not be reviewable on appeal under Section 19997.14 of the Government Code. Whenever a demotion in lieu of layoff requires a layoff in a lower class the points deducted from an employee's score in the higher class shall not be deducted from the score in the lower class.

NOTE: Authority cited: Sections 19815.4(d) and 19816, Government Code. Reference: Sections 19997.3 and 19997.13, Government Code.

§ 599.846. Order of Layoff When Combined Scores Are Equal.

As between two or more employees having the same layoff score, the order of layoff shall be determined by giving preference for retention in the following sequence: (1) veteran; (2) employee with greatest amount of service in the class of layoff or in a class at substantially the same or higher salary level as the class of layoff; (3) employee who has served in the service class of layoff or in a class at substantially the same or higher salary level as the class of layoff with the highest maximum salary; (4) employee with the earliest appointment date for any service credit computed under the provisions of Section 19997.3 of the Government Code; (5) employee with the greatest total state service as computed under the provisions of Section 599.739; (6) employee with the earliest date of appointment to state service qualified under the provisions of Section 599.739; (7) employee whose name is drawn by lot.

As between two or more employees in a professional, scientific, administrative, management, or executive class having the same layoff score, the employee who has the lower rating for current performance shall be laid off first. If distinction cannot be made between two or more such employees with the same score by this means the other preferences provided in this section shall apply.

NOTE: Authority cited: Sections 19815.4(d) and 19816, Government Code. Reference: Sections 19997, 19997.3, 19997.4 and 19997.7, Government Code.

§ 599.847. Order of Layoff.

If requested by the appointing authority and approved by the Director of the Department of Personnel Administration layoff of employees in any one of the following categories may be made before layoff of employees in the other categories: intermittent, part–time, full–time; provided that full–time employees laid off as a result of the application of this section may elect transfer to remaining intermittent and part–time positions in accordance with the provisions of the act governing demotion in lieu of layoff.

NOTE: Authority cited: Sections 19815.4(d) and 19816, Government Code. Reference: Sections 19997 and 19997.7, Government Code.

§ 599.849. Reemployment List Order.

When the names of employees whose seniority scores were computed in accordance with the provisions of Government Code Section 19997.3 that became effective on April 21, 1980, are placed on reemployment lists containing the names of persons whose seniority scores were computed prior to that date, the order of names on the reemployment list shall be the same as if the seniority scores of all persons on the list had been computed in accordance with the provisions that became effective on April 21, 1980.

NOTE: Authority cited: Sections 19815.4(d) and 19816, Government Code. Reference: Sections 19997.3 and 19997.4, Government Code.

§ 599.850. Designation of Classes As Professional, Scientific, Administrative, Management or Executive.

For the purpose of administering Section 19997.3 of the Government Code, classes designated as professional, scientific, administrative, man-

agement, or executive will include those classes assigned to Work Week Group 4C under Section 599.703 or those classes which are determined to meet the following criteria:

(a) The work performed either involves supervision of employees as a primary duty; or,

(b) The work is predominantly intellectual and varied in character and requires the consistent exercise of discretion and judgment.

NOTE: Authority cited: Sections 19815.4(d) and 19816, Government Code. Reference: Section 19997.3, Government Code.

HISTORY

1. New section filed 2–9–84 (corrected copy refiled 2–27–84); effective thirtieth day thereafter (Register 84, No. 8).
2. Editorial correction of HISTORY NOTES printed in error in Register 84, Nos. 8 and 12 (Register 84, No. 15).

§ 599.851. (Reserved)

§ 599.852. (Reserved)

§ 599.853. (Reserved)

Article 20.5. State Restriction of Appointments

§ 599.854. Scope—Excluded Employees.

(a) This article shall govern the Department of Personnel Administrations' program under sections 19998 and 19998.1 of the Government Code to assist in the job placement of excluded employees who may be facing layoff or demotion–in–lieu of layoff as those terms are used in sections 19997 and 19997.8 of the Government Code. This program shall be known as the State Restriction of Appointments (SROA) Program. For the purposes of this article, an excluded employee is: an employee as defined in Section 3527(b) of the Government Code.

(b) It is the intent of the SROA Program, to the extent that it is administratively feasible, to prevent the layoff and separation of skilled and experienced employees from State service.

(c) The SROA Program assists in placing affected employees by temporarily restricting the methods of appointment available to appointing powers. Employees on SROA lists are granted preferential consideration over all other types of appointments except appointments from reemployment lists and mandatory reinstatements.

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19820, Government Code. Reference: Sections 3527(b), 19998 and 19998.1, Government Code.

HISTORY

1. New section filed 8–28–90; operative 9–27–90 (Register 90, No. 42).
2. Change without regulatory effect amending section heading, subsection (a) and NOTE filed 4–2–92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 14).

§ 599.854.1. State Restriction of Appointments Program Eligibility—Excluded Employees.

(a) To participate in the SROA Program the appointing power must first demonstrate to the Department of Personnel Administration, that for each class requested an employee surplus exists which, unless eliminated, would result in layoffs.

(b) After certification by the Department of Personnel Administration that the agency's employee surplus cannot be resolved through voluntary transfers, voluntary demotions, reduced worktime or other voluntary means, the Department of Personnel Administration shall authorize the use of the SROA Program for employees who are facing layoff or demotion in–lieu–of layoff. Employees in the class(es) of layoff will be placed on the SROA lists based on the following criteria:

(1) Employees who may be subject to layoff or demotion–in–lieu of layoff, will be considered as eligible for the SROA Program.

(2) Additional employees may be placed on SROA for the class(es) of layoff when the Department of Personnel Administration determines that their participation in the SROA Program will help to prevent the layoff of other employees.

(c) With the approval of the director, the appointing power may restrict the organizational subdivision and/or the geographical location of those employees eligible for the SROA Program, when the organizational and geographical parameters of the layoff have been similarly restricted.

(d) Initial SROA eligibility approval for employees facing layoff, demotion–in–lieu of layoff and involuntary transfer, shall be granted for 120 calendar days.

(e) The director may extend the initial SROA eligibility period up to an additional 120 calendar days when it has been determined that:

(1) A substantial number of the surplus employees have not been placed in other agencies, or;

(2) An extension of the SROA eligibility period would likely result in additional SROA placements.

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19820, Government Code. Reference: Sections 19998 and 19998.1, Government Code.

HISTORY

1. New section filed 8–28–90; operative 9–27–90 (Register 90, No. 42).
2. Change without regulatory effect amending section heading and subsections (c) and(e)(1) filed 4–2–92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 14).

§ 599.854.2. State Restriction of Appointments Program Lists—Excluded Employees.

(a) Following approval by the Department of Personnel Administration for participation in the SROA Program, the appointing power may proceed with the enrollment of employees into the program.

(b) The appointing power shall be responsible for informing all affected employees about the SROA Program and how to apply for a SROA listing.

(c) Employee participation in the SROA Program is voluntary.

(d) Employees may not voluntarily place themselves on inactive status once their names are placed active on an SROA listing. However, employees may request that specific classes be removed from their SROA listing, if they do not wish to receive job inquiries for those classes.

(e) SROA eligible employees may exercise an unlimited number of waivers of appointment from SROA lists.

(f) Any employee on an eligible SROA list may be hired regardless of where they are placed on the list.

(g) Appointing powers that may be attempting to fill vacant limited–term positions which are projected for nine months or longer, will be required to use the SROA lists. Eligibles should be informed during the initial contact that the vacancy is being filled on a limited–term basis and the anticipated length of the assignment.

(h) Reemployment lists as defined in sections 18534 et seq; 18903 et seq; 19997.2 and 19997.11 of the Government Code take precedence over SROA lists.

(i) When an SROA list is established, all appointing powers must make appointments to a restricted class from a SROA list or meet the appointment exemption criteria as listed in section 599.854.4.

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19820, Government Code. Reference: Sections 19998 and 19998.1, Government Code.

HISTORY

1. New section filed 8–28–90; operative 9–27–90 (Register 90, No. 42).
2. Change without regulatory effect amending section heading and subsections (g) and (h) filed 4–2–92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 14).

§ 599.854.3. Inquiry and Clearance of State Restriction of Appointments Program Lists—Excluded Employees.

(a) All job interest inquiries to fill a vacant position from an SROA listing should be made in writing. Telephone inquiries may be made if verified in writing.

(b) Employees shall be allowed a reasonable time to respond to inquiries as provided for in State Personnel Board rules 258 and 260, title 2, division 1, chapter 1 of the California Code of Regulations.

(c) A name may be cleared from SROA list for any of the following reasons.

(1) The employee has been hired by another agency.

(2) The employee waives eligibility for appointment.

(3) The employee does not respond to the inquiry.

(4) The employee does not appear for work or an interview as scheduled.

(5) The employee is hired from the SROA certification.

(6) The appointing power requests and is granted an SROA exemption pursuant to section 599.855.4.

(d) The appointing power must inform all SROA eligibles that failure to respond to the SROA inquiry, or to appear for a scheduled SROA interview, will result in automatic placement on inactive status for the class in all agencies (State Personnel Board rule 260).

NOTE: Authority Cited: Sections 19815.4(d), 19816 and 19820, Government Code. Reference: Sections 19998 and 19998.1, Government Code.

HISTORY

1. New section filed 8–28–90; operative 9–27–90 (Register 90, No. 42).
2. Change without regulatory effect amending section heading filed 4–2–92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 14).

§ 599.854.4. State Restriction of Appointments Program Exemptions—Excluded Employees.

(a) The following types of appointments are not subject to the SROA Program and require no prior SROA approval, providing the criteria set forth below are met.

(1) The appointment is from a reemployment list.

(2) The appointment is a mandatory reinstatement to the same class, same agency.

(3) The appointment is an intra–agency transfer to the same class.

(4) The appointee is a retired annuitant, pursuant to section 19144 of the Government Code.

(5) The appointment is to a full–time position from a reduced worktime position. This applies only to a permanent full–time employee who voluntarily reduced his/her time base under the reduced Worktime Act (section 19996.20 et seq.) and is returning to full–time work in the same class in the same agency.

(6) The appointment is a promotion in place; there is no true vacant position, there is no change of position, or supervisory/subordinate relationship; and the promotion is clearly identified as typical in cases where the employee has reached the next higher level within a class series. Promotions that do not meet this criteria are subject to the SROA Program.

(b) Special exemptions to the SROA Program must be requested in writing by the appointing power and approved in advance by the Department of Personnel Administration. Blanket exemptions will not be granted.

(c) The following types of appointments and extraordinary circumstances shall qualify for a special exemption to the SROA Program.

(1) Placement of a disabled worker to an appropriate class, as recommended and/or approved by a physician, for reasonable accommodation pursuant to section 19230(c) of the Government Code. The exemption request requires a written request with a full explanation of the situation and copy of the doctor's supporting statement.

(2) Voluntary employee transfers, between classes within an agency, are not restricted when they are made in conformance with a written plan, approved in advance by the Department of Personnel Administration.

(3) If an appointing power wishes to fill a vacancy in a SROA class, with an inter–agency transfer, the vacancy left in the other agency must be filled using the SROA program. Consideration will be given to the classes offered in the exchange, the salary relationship between the classes and the geographical location of the vacant position being offered. These transactions must be approved by the Department of Personnel Administration prior to the transfer actually taking place.

(4) Emergency and Limited–Term appointments of less than nine months duration when there is no possibility of a permanent appointments.

(5) Limited Examination Appointment Program (LEAP) appointments. Before a LEAP eligible can be initially hired the appointing power must first request and receive approval for a SROA exemption. When a LEAP eligible has successfully completed the Temporary Authorization (State Personnel Board rule 265) period the appointing power may make a permanent appointment for that person without requesting another SROA exemption.

(d) Requests for special exemptions based on critical hiring needs will be granted only when the appointing power has demonstrated that the SROA candidates do not have the knowledge, skills and background required for the position, or that the training period required to qualify the SROA candidate would be of such length that the effectiveness of a specific program would be jeopardized unless the exemption is granted.

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19820, Government Code. Reference: Sections 19998 and 19998.1, Government Code.

HISTORY

1. New section filed 8–28–90; operative 9–27–90 (Register 90, No. 42).
2. Change without regulatory effect amending section heading and subsections (a), (c)(1), and (c)(3) filed 4–2–92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 14).

Article 21. Employer–Employee Relations for Excluded Employees

§ 599.856. Definitions.

For the purpose of this article, the following definitions apply:

(a) "Excluded Employee" means an employee of the State excluded from or otherwise without exclusive representation under the Ralph C. Dills Act.

(b) "Excluded Employee Organization" means an organization which represents members who are "excluded employees" under section 3526 through 3539 of the Government Code.

(c) "Supervisory Organization" means an organization which represents members who are supervisory employees under sections 3513(g), 3527(e), 3529 through 3535 and 3538 of the Government Code.

NOTE: Authority cited: Sections 3536, 3535, 19815.4(d) and 19816, Government Code. Reference: Sections 3513(a), 3513(c), 3513(g), 3530, 3513(b) and 3527(b), Government Code.

HISTORY

1. New article 21 (sections 599.856–599.858) filed 6–28–84; designated effective 7–1–84 pursuant to Government Code section 11346.2(d) (Register 84, No. 26).
2. Change without regulatory effect amending section and NOTE filed 7–17–92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 29).

§ 599.857. Registration of Supervisory and Excluded Employee Organizations.

Supervisory organizations and excluded employee organizations shall submit an annual registration statement on or before July 1 of each calendar year to the Director, Department of Personnel Administration. The registration statement shall at least list the name of the organization, affiliations, headquarters and other business addresses, principal business telephone number, a list of principal officers and representatives, and a copy of its organization by–laws.

NOTE: Authority cited: Sections 3537 and 19815.4(d), Government Code. Reference: Sections 3532(b), 3535 and 3537, Government Code.

HISTORY

1. Change without regulatory effect amending section and NOTE filed 7–17–92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 29).

§ 599.858. Standards and Procedures—Excluded Employees.

An excluded employee is defined in section 599.615(b).

(a) A State employee who is an official representative of a supervisory or excluded employee organization and is recognized by the Director, Department of Personnel Administration, may use a reasonable amount of State time, as approved by the Director and the appointing power, for conferring with management on employment relations matters.

(b) During assigned working hours excluded employees shall not conduct or participate in supervisory or excluded employee organization

business affairs including, but not limited to, meetings, dues collection, and membership campaigns.

(c) Reasonable access to work locations shall be provided to officers and representatives of supervisory organizations and excluded employee organizations. Access shall not interfere with State business or safety or security requirements. Officers and representatives of such organizations shall not enter a work location without the consent of an agency representative.

(d) Bulletin boards where they exist may be made available to supervisory or excluded employee organizations. Agency management may require its prior approval before material is posted.

NOTE: Authority cited: Sections 3535, 19815.4(d) and 19816, Government Code. Reference: Sections 3530 and 3535, Government Code.

HISTORY

1. Change without regulatory effect amending section heading, subsections (a) and (b) and NOTE filed 7-17-92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 29).

§ 599.859. Grievance and Appeal Procedure—Excluded Employees.

For the purposes of this section an excluded employee is defined in section 3527(b) of the Government Code.

(a) The purpose of grievance and appeal procedures is to provide for the prompt review and resolution of issues either formally or informally at the lowest possible level.

(b) Definitions.

(1) "Grievance." A grievance is a dispute of one or more excluded employees involving the application or interpretation of a statute, regulation, policy or practice which falls under the jurisdiction of the Director, Department of Personnel Administration.

(2) "Non-Merit Statutory Appeal." A non-merit, statutory appeal is: an appeal of transfer in accordance with sections 19994.2–19994.4 of the Government Code; a petition to set aside resignation in accordance with section 19996.1; an appeal for reinstatement after automatic resignation (AWOL) in accordance with section 19996.2; or an appeal of layoff in accordance with section 19997.14.

(c) Grievance Procedures. Each appointing power may establish in writing a procedure for the resolution of grievances of its excluded employees and any such procedure shall be subject to the review and approval by the Director. However unless such a procedure is established, the appointing power shall follow the standard grievance procedure prescribed by the Director in subsection (d).

(d) Standard Grievance Procedure. Each party involved in a grievance shall attempt to resolve the grievance promptly. Every effort should be made to complete required actions within the time limits contained in the grievance procedure. However, with the mutual consent of the parties, the time limit for any step may be extended.

(1) A grievance procedure shall consist of as few levels of review as practicable; however, no procedure shall provide for more than four levels of review.

(2) Informal Discussion. The excluded employee or the excluded employee's representative shall discuss the grievance with the excluded employee's immediate supervisor. If the grievance is not settled within five (5) work days, a written grievance may be filed.

(3) Formal Grievance—Level 1. A formal grievance may be filed no later than ten (10 work days after the event or circumstances occasioning the grievance. The first level of review shall respond to the grievance in writing within ten (10) work days after the receipt of the formal grievance.

(4) Formal Grievance—Level 2. The grievant may appeal the decision of the first level within ten (10) work days after receipt of the response. Within fifteen (15) work days after receipt of the appealed grievance, the person designated by the appointing power as the second level of review shall respond in writing to the grievance.

(5) Formal Grievance—Level 3. The grievant may appeal the decision of the second level within ten (10) work days after receipt of the response to the appointing power or his/her designee. Within fifteen (15) work days after receipt of the appeal, the appointing power or his/her designee shall respond in writing to the grievance.

(6) Formal Grievance—Level 4. The grievant may appeal the decision of the third level within ten (10) work days after receipt of the response to the Director, Department of Personnel Administration or his/her designee. Within twenty (20) work days the Director, or his/her designee shall respond in writing to the grievance.

(e) Forms. The Director shall prescribe a standard excluded employee grievance form and any additional forms to be used in processing grievances.

(f) Representation. The excluded employee and his/her representative, recognized by the Director in accordance with the provisions of Section 599.857, may be authorized a reasonable amount of work time, as determined by the appointing power and approved by the Director, to prepare and present a grievance.

(g) Non-Merit Statutory Appeals.

(1) Disputes regarding appeals of layoff, appeals of transfer, petitions to set aside resignation, appeals for reinstatement after automatic resignation shall be filed in writing directly with the Director. Such appeals shall be filed in accordance with specific time limits proscribed by applicable statute.

(2) Such appeal may be assigned to a hearing officer for hearing or investigation. The hearing officer is the authorized representative of the Director and is fully authorized and empowered to grant or refuse extensions of time, to set such proceeding for hearing, to conduct a hearing or investigation in every such proceeding, and to perform any and all other acts in connection with such proceeding that may be authorized by law or by this article.

(3) Rehearing. Within thirty (30) days after service of a copy of the decision any party may file a written petition for rehearing with the Director. Within thirty (30) days after such filing, the Director shall serve a copy of the petition upon the other parties to the proceeding. Within sixty (60) days after service of the petition for rehearing, the Director shall either grant or deny the petition in whole or in part. Failure to act upon a petition for rehearing within the ninety (90) day period is a denial of the petition. If a rehearing is granted, the Director may rehear the case itself on all the pertinent parts of the record of the prior hearing and such additional evidence and argument as may be permitted by the Director.

(4) Decision Becomes Final When. Unless a proper application for rehearing is made in accordance with subsection (g)(3), every decision shall become final 30 days after service by the Director of a copy of such decision upon the parties to the proceeding in which the decision is rendered.

NOTE: Authority cited: Sections 3535 and 19815.4(d), Government Code. Reference: Sections 3535, 18714, 19994.4, 19996.1, 19996.2 and 19997.14, Government Code.

HISTORY

1. New section filed 8-28-84; designated effective 8-31-84 pursuant to Government Code section 11346.2(d) (Register 84, No. 35).
2. Change without regulatory effect amending section heading and text, and NOTE filed 7-17-92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 29).
3. Editorial correction of Reference cite (Register 95, No. 40).

Article 21.1. Bona Fide Associations

§ 599.866. Definitions.

For the purpose of this article, the following definition shall be controlling:

(a) "Bona Fide Association" means an organization of employees and former employees of the State including affirmative action advocacy groups and professional organizations which do not have as one of their purposes the representing of employees in their relations with the State.

NOTE: Authority cited: Sections 3520.7(a) and 19815.4(d), Government Code. Reference: Sections 1150(d) and 3520.7(a), Government Code.

HISTORY

1. New Article 21.1 (Sections 599.866–599.868) filed 6–28–84; designated effective 7–1–84 pursuant to Government Code Section 11346.2(d) (Register 84, No. 26).
2. Editorial correction of Reference cite (Register 95, No. 5).

§ 599.867. Registration of Bona Fide Associations.

Each bona fide association shall submit an annual registration statement on or about July 1 of each calendar year in a form prescribed by the Department of Personnel Administration. The registration statement shall include the following information: name of bona fide association, headquarter's address, telephone number, list of principal officers and their mailing addresses.

The statement shall also include a written certification that the bona fide association is observing the following practices before submitting a request for registration:

(a) The purpose of the association is not to represent State employees on matters within the scope of representation; and

(b) The association does not have an affiliation with an employee organization or a recognized employee organization; and

(c) The association is not acting as an employee organization by filing unfair labor practice charges or competing to be an exclusive bargaining agent in unit certification elections; and

The statement shall be accompanied by a copy of the association's by–laws.

NOTE: Authority cited: Sections 3520.7 and 19815.4(d), Government Code. Reference: Sections 1150(d) and 3520.7, Government Code.

§ 599.868. Removal of Bona Fide Association Registration.

The registration of a bona fide association may be removed by the Department of Personnel Administration for the following reasons:

(a) Substantiation by the Department of Personnel Administration that the bona fide association has represented an employee in his or her employer–employee relations with the State, or is affiliated with an employee organization.

(b) Failure of the bona fide association to provide the annual registration statement.

(c) Substantiation by the State Controller that the bona fide association has interfered or failed to cooperate in an employee's request to decline membership or payroll dues deduction.

NOTE: Authority cited: Sections 3520.7 and 19815.4(d), Government Code. Reference: Sections 1153(a) and 3520.7, Government Code.

HISTORY

1. Editorial correction of subsection (c) (Register 95, No. 40).

Article 21.5. Employee Activities

§ 599.870. Incompatible Activities Statements.

(a) To develop or revise an incompatible activities statement the appointing power shall:

(1) Publish the proposed statement or revision and a supporting statement of rationale for review and written comment by affected employees for at least 30 calendar days. The appointing power shall use a manner of publication which reasonably and likely assures the opportunity for affected employees to be informed of the proposed statement or revision. The published notice shall indicate how and by when comments are to be submitted.

(2) Respond in writing to concerns expressed by affected employees and their representatives about the statement during the review period by either making changes to the statement that are responsive to their concerns or informing them why such changes are not being made.

(3) File with the Department of Personnel Administration for approval a copy of the statement, the statement of rationale, a summary of the process followed in developing or revising the statement, a summary of the written comments received from employees and their representatives and the appointing power's response to the comments.

(b) The statement shall describe as specifically as possible the kinds of activities that are deemed incompatible.

(c) Except as provided by section (d) below, the statement shall be effective on the day it is approved by the Department.

(d) The statement or revision may take effect immediately for a period not to exceed 90 days, when the appointing power establishes and the director concurs that delaying adoption of the proposed statement or revision until the process outlined in subsection (a) is completed could significantly impair agency operations. Such statements or changes shall not remain in effect for longer than 90 calendar days unless they are approved by the Department after being publicized and submitted as specified in subsection (a).

(e) Each appointing power shall describe within the statement the process for employees to appeal the application of an incompatible activities statement to them. The final review level in the process shall be the appointing power or his or her designee.

(f) Each appointing power shall ensure that its incompatible activities statement is kept current and that employees are aware of and have access to it. New employees shall be given a copy of the statement upon appointment. The statement shall also be available for public review upon request.

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19820, Government Code. Reference: Section 19990, Government Code.

HISTORY

1. New section filed 11–4–87; operative 12–4–87 (Register 87, No. 49).

Article 22. Duration Service

§ 599.873. Conditions of Employment.

Unless otherwise provided in this Article, the regulations governing the conditions of employment of employees in regular appointments shall govern the conditions of employment of duration employees. Such conditions of employment shall include the counting of service under duration appointment as regular service in the computation of seniority points and in determining eligibility for salary adjustment, sick leave, and vacation.

NOTE: Authority cited: Sections 19815.4(d) and 19816, Government Code. Reference: Sections 19200 and 19815.4(d), Government Code.

HISTORY

1. New section filed 2–9–84; effective thirtieth day thereafter (Register 84, No. 8). For history of Article 22, see Register 83, No. 37.
2. New section refiled 2–27–84 to correct inadvertent omission of text from 2–9–84 order; designated effective 3–10–84 (Register 84, No. 8).
3. Editorial correction of HISTORY NOTE No. 2 filed 3–9–84 (Register 84, No. 12).

§ 599.874. Reports of Performance.

Probationary and annual reports of performance shall be filed for duration employees in the same manner and at the same time as is required for regular employees.

NOTE: Authority cited: Sections 19815.4(d) and 19816, Government Code. Reference: Section 19172, Government Code.

HISTORY

1. New Article 22 (Sections 599.874–599.877, not consecutive) filed 9–6–83; effective thirtieth day thereafter (Register 83, No. 37).

CROSS REFERENCE: See Title 2, Division 1, Chapter 1, Subchapter 1, Sections 501–510.

§ 599.876. Layoff.

The order and procedure of layoff of duration employees shall be the same as is prescribed for regular employees, except that no regular limited–term employee, regular probationer, or regular permanent employee in the class in the layoff unit shall be laid off while a duration employee is retained in the same class and layoff unit. Only the names of duration employees shall be placed on duration re–employment lists.

NOTE: Authority cited: Sections 19815.4(d) and 19816, Government Code. Reference: Section 19200, Government Code.

§ 599.877. Leave of Absence.

Except as otherwise provided in these regulations, the regulations governing leaves of absence for regular employees shall govern leaves of absence for duration employees. On the date duration appointments are terminated, the right of a person on leave from a duration appointment to be reinstated to his/her duration appointment shall terminate also. Upon such termination, an employee who had permanent or probationary status in a regular position immediately preceding his/her duration employment, shall be granted such leave of absence rights as he/she would still retain if the leave had been from the position previously held under permanent appointment.

NOTE: Authority cited: Sections 19815.4(d) and 19816, Government Code. Reference: Section 19200, Government Code.

§ 599.878. (Reserved)

§ 599.879. (Reserved)

Article 23. General Provisions

§ 599.880. Citation of Rules.

Each section of these regulations is a section of the Department of Personnel Administration and may be cited as such. Thus, this section, whether appearing in the California Administrative Code or elsewhere, may be cited as "Department of Personnel Administration Section 599.880" or "2 Cal. Adm. Code 599.880."

NOTE: Authority cited: Sections 19815.4(d) and 19816, Government Code. Reference: Section 19815.4(d), Government Code.

HISTORY

1. New Article 23 (Sections 599.880–599.883) filed 9–6–83; effective thirtieth day thereafter (Register 83, No. 37).

CROSS REFERENCE: See Title 2, Division 1, Chapter 1, Subchapter 1, Sections 21–24.

§ 599.881. Effect of Headings.

Article and section headings contained herein shall not be deemed to govern, limit, modify or in any manner affect the scope, meaning, or intent of the provisions of any article or section hereof.

NOTE: Authority cited: Sections 19815.4(d) and 19816, Government Code. Reference: Section 19815.4(d), Government Code.

§ 599.882. Continuing Provisions.

The provisions of these regulations, insofar as they are substantially the same as regulations of the State Personnel Board superseded hereby and relating to the same subject matter, shall be construed as restatements and continuations and not as new enactments. Rights, privileges, and remedies accrued under any regulations superseded by these regulations are continued in full force and effect unless abolished by some contrary provision herein.

NOTE: Authority cited: Sections 19815.4(d) and 19816, Government Code. Reference: Section 19815.4(d), Government Code.

§ 599.883. Reports.

In order that the work of the Department of Personnel Administration may be expedited, the appointing power of every state agency shall file with the Department such reports as the Department or the Director of the Department of Personnel Administration may require. Reports shall be submitted on such forms and filed at such times as may be prescribed by the Department or the Director.

NOTE: Authority cited: Sections 19815.4(d) and 19816, Government Code. Reference: Section 19815.4(a) and (b), Government Code.

Article 24. Administration

§ 599.884. (Reserved)

§ 599.885. Conflict of Interest Code.

The Political Reform Act (Government Code section 8100, et seq.) requires state and local government agencies to adopt and promulgate conflict of interest codes. The Fair Political Practices Commission has adopted a regulation (Title 2, Division 6, of the California Code of Regulations Section 18730) which contains the terms of a standard conflict of interest code, which can be incorporated by reference in an agency's code. After public notice and hearing it may be amended by the Fair Political Practices Commission to conform to amendments in the Political Reform Act. Therefore, the terms of Title 2, Division 6, of the California Code of Regulations Section 18730 and any amendments to it duly adopted by the Fair Political Practices Commission are hereby incorporated by reference. This regulation and the attached Appendix designating officials and employees and establishing disclosure categories, shall constitute the conflict of interest code of the Department of Personnel Administration.

Designated employees shall file statements of economic interests with their agency. Upon receipt of the statement of the Director, the agency shall make and retain a copy and forward the original of this statement to the Fair Political Practices Commission. Statements for all other designated employees will be retained by the agency.

Appendix

Designated Positions	*Assigned Disclosure Categories*
Director	1,2,3,4,5
Chief Deputy Director	1,2,3,4,5
Deputy Director	1,2,3,4,5
Chief Counsel	1,2,3,4,5
All Division Chiefs	1,2,3,4,5
All Deputy/Assistant Division Chiefs	1,2,3,4,5
Administrative Law Judge	1,2,3,4,5
All department attorneys	1,2,3,4,5
Labor Relations Officer	4,5
Manager, State Training Center	1,2
Administrator, Deferred Compensation Program	3,4
Fiscal Officer	1
Budget Officer	1
Budget Analyst/Specialist	1
Contracts Manager*	1
Contracts Analyst*	1
Business Service Officer (Purchasing)*	1,2
Business Service Assistant (Purchasing)*	1,2
Consultants	***

*Includes any program/project manager, or employee, with contracting or purchasing authority.

***Consultants shall disclose pursuant to the broadest disclosure category in the code subject to the following limitations: The Director may determine in writing that a particular consultant, although a "designated position," is hired to perform a range of duties that is limited in scope and thus is not required to fully comply with the disclosure requirements in this Section. Such written determination shall include a description of the consultant's duties and, based upon that description, a statement of the extent of disclosure requirements. The Director's determination is a public record and shall be retained for public inspection in the same manner and location as this conflict of interest code.

DISCLOSURE CATEGORIES:

Category 1

Designated officials or employees assigned to this category must report:

(1) Investments in any business entity and income, including gifts, loans, and travel payments from any source of the type which, within the last two years has contracted with the Department of Personnel Administration to provide services, supplies, materials, machinery or equipment.

(2) His or her status as a director, officer, partner, trustee, employee or holder of a position of management in any business entity to the type which, within the last two years, has contracted with the Department of Personnel Administration to provide services, supplies, materials, machinery or equipment.

Category 2

Designated officials or employees assigned to this category must report:

(1) Investments in any business entity and income, including gifts, loans, and travel payments from any source of the type which, within the last two years, has contracted with the Department of Personnel Administration to provide instructional or consultant services or facilities for training programs.

(2) His or her status as a director, officer, trustee, employee or holder of a position of management in any business entity of the type which, within the last two years, has contracted with the Department of Personnel Administration to provide instructional or consultant services or facilities for training programs;

Category 3

Designated officials or employees assigned to this category must report:

(1) Investments in any business entity and income, including gifts, loans, and travel payments from any source of the type which, within the last two years, has contracted with the Department of Personnel Administration as an investment plan included in the Deferred Compensation Program.

(2) His or her status as a director, officer, trustee, employee or holder of a position of management in any business entity of the type which, within the last two years, has contracted with the Department of Personnel Administration as an investment plan included in the Deferred Compensation Program.

Category 4

Designated officials or employees assigned to this category must report:

(1) Investments in any business entity and income, including gifts, loans, and travel payments from any source of the type which provides services, insurance, subsidies, or discounts as part of a benefit package for State employees.

(2) His or her status as a director, officer, partner, trustee, employee or holder of a position of management in any business entity of the type which provides services, subsidies, or discounts as part of a benefit package for State employees.

Category 5

Designated officials or employees assigned to this category must report:

(1) Income, including gifts, loans, and travel payments from any employee of the State of California who is covered by the provisions of the Ralph C. Dills Act.

(2) Income from any California State employee organization.

NOTE: Authority cited: Sections 87300 and 87304, Government Code. Reference: Section 87300, et seq., Government Code.

HISTORY

1. New section and Appendix filed 2–26–87; effective thirtieth day thereafter. Approved by Fair Political Practices Commission 1–13–87 (Register 87, No. 10).
2. Amendment of section and Appendix filed 12–5–90; operative 1–4–91. Submitted to OAL for printing only pursuant to Government Code section 11343.8. Approved by Fair Political Practices Commission 10–18–90 (Register 91, No. 5).
3. Amendment of section and Appendix filed 4–4–2003; operative 5–4–2003. Approved by Fair Political Practices Commission 2–3–2003 (Register 2003, No. 14).

§ 599.886. (Reserved)

§ 599.887. (Reserved)

§ 599.888. Notice of Hearing.

Whenever notice of hearing is required to be given of matters to be heard or considered by the Department of Personnel Administration and a different method is not provided, the Director shall cause a notice to be posted at the office of the Department at Sacramento at least six (6) days before the date of hearing giving the nature of the matter and giving notice that all persons interested may appear, at a time and place mentioned in the notice, in support or in opposition to the matter. In cases of emergency the Director may shorten the period of notice to not less than three (3) days.

NOTE: Authority cited: Sections 19815.4(d) and 19816, Government Code. Reference: Section 18575, Government Code.

HISTORY

1. New Article 24 (Section 599.888) filed 9–6–83; effective thirtieth day thereafter (Register 83, No. 37).

CROSS REFERENCE: See Title 2, Division 1, Chapter 1, Subchapter 1, Section 34.5.

§ 599.889. (Reserved)

§ 599.890. (Reserved)

§ 599.891. (Reserved)

§ 599.892. (Reserved)

Article 25. Hearings

§ 599.893. Scope of Article.

The regulations in this article shall apply to all parties to appeal hearings conducted by the Department of Personnel Administration, its Director and his/her designees.

NOTE: Authority cited: Sections 19815.4(d) and 19816, Government Code. Reference: Section 19815.4, Government Code.

HISTORY

1. New section filed 2–9–2004; operative 2–9–2004 pursuant to Government Code section 11343.4 (Register 2004, No. 7).

§ 599.894. Definitions.

Unless the context requires otherwise, the definitions immediately hereinafter set forth govern the construction of this article.

NOTE: Authority cited: Sections 19815.4(d) and 19816, Government Code. Reference: Section 19815.4, Government Code.

HISTORY

1. New Article 25 (Sections 599.894–599.910, not consecutive) filed 9–6–83; effective thirtieth day thereafter (Register 83, No. 37).
2. Amendment of NOTE filed 2–9–2004; operative 2–9–2004 pursuant to Government Code section 11343.4 (Register 2004, No. 7).

§ 599.895. Appeal.

"Appeal" means any written request for relief filed with the Department of Personnel Administration and includes "application," "petition," and "protest."

NOTE: Authority cited: Sections 19815.4(d) and 19816, Government Code. Reference: Section 19815.4, Government Code.

HISTORY

1. Amendment of NOTE filed 2–9–2004; operative 2–9–2004 pursuant to Government Code section 11343.4 (Register 2004, No. 7).

§ 599.896. Appellant.

"Appellant" means the person or state agency filing any appeal with the Department of Personnel Administration.

NOTE: Authority cited: Sections 19815.4(d) and 19816, Government Code. Reference: Section 19815.4, Government Code.

HISTORY

1. Amendment of NOTE filed 2–9–2004; operative 2–9–2004 pursuant to Government Code section 11343.4 (Register 2004, No. 7).

§ 599.897. Respondent.

"Respondent" means the person or state agency whose interests are adverse to those of the appellant or who will be directly affected by the Department's decision.

NOTE: Authority cited: Sections 19815.4(d) and 19816, Government Code. Reference: Section 19815.4, Government Code.

HISTORY

1. Renumbering of former section 599.898 to new section 599.897, including amendment of NOTE, filed 2–9–2004; operative 2–9–2004 pursuant to Government Code section 11343.4 (Register 2004, No. 7).

§ 599.898. Administrative Adjudication Provisions.

The following administrative adjudication provisions of the Administrative Procedure Act (APA), which are set forth in Chapters 4.5 and 5 of Part 1 of Division 3 of Title 2 of the Government Code are applicable to the Department of Personnel Administration's appeals hearings as follows:

(a) Articles 1, 2, 3, 4, 6, 7, 8, 10 and 16 of Chapter 4.5 are applicable.

(b) Article 9 of Chapter 4.5 is applicable, except Government Code Sections 11440.30 and 11440.50, which are not applicable.

(c) Article 12 of Chapter 4.5 is applicable except Section 11455.30. Any authority of the Director or a presiding officer is subject to the limitations of the Government Code Sections applicable to the Department of Personnel Administration.

(d) Article 5 of Chapter 4.5 is not applicable, except Government Code Section 11420.30, which is applicable.

(e) Articles 11, 13, 14, and 15 of Chapter 4.5 are not applicable.

(f) Chapter 5 is not applicable.

NOTE: Authority cited: Sections 19815.4(d) and 19816, Government Code. Reference: Sections 11400–11415.60, 11420.30, 11425.10–11440.20, 11440.40, 11440.45, 11440.60, 11445.10–11445.60, 11455.10, 11455.20, 11475–11475.70 and 19815.4, Government Code.

HISTORY

1. Renumbering of former section 599.898 to section 599.897 and new section 599.898 filed 2–9–2004; operative 2–9–2004 pursuant to Government Code section 11343.4 (Register 2004, No. 7).

§ 599.903. Appeal Rights.

Every appeal filed with the Department of Personnel Administration shall state the facts upon which it is based and the relief requested in sufficient detail to enable the Department to understand the nature of the proceeding and the parties concerned. Unless the appeal names some other respondent, the appellant's appointing power shall be considered the only respondent. The Director shall mail or serve a copy of the appeal to or on the respondent.

NOTE: Authority cited: Sections 19815.4(d) and 19816, Government Code. Reference: Section 19815.4, Government Code.

HISTORY

1. Amendment of section heading, section and NOTE filed 2–9–2004; operative 2–9–2004 pursuant to Government Code section 11343.4 (Register 2004, No. 7).

§ 599.904. Time and Manner of Filing.

Appeals filed with the Department of Personnel Administration shall be subject to the following requirements:

(a) All appeals shall be filed in writing directly with the Director in accordance with specific time limits prescribed by statute and regulation. An appeal is considered filed on the date it is mailed (postmarked) to the Department or the date it is received, whichever is earlier.

(b) Except as otherwise provided in the act or these regulations, every appeal shall:

(1) be filed with the Department of Personnel Administration within 30 days after the appellant has been served with the notice, report, or document from which the appeal is taken; or

(2) if there has been no such service and none is required, within 30 days after the event happened upon which the appeal is based; and

(c) Except as otherwise limited by statute or case law, the Department of Personnel Administration or the Director may allow such an appeal to be filed within 30 days after the end of the period in which the appeal should have been filed if the petitioner demonstrates good cause for a late filing.

NOTE: Authority cited: Sections 19815.4(d) and 19816, Government Code. Reference: Section 19815.4, Government Code; *Bidwell v. State of California* (1985) 164 Cal.App.3d 213 and *Gonzalez v. State Personnel Board* (1977) 76 Cal.App.3d 364.

HISTORY

1. Amendment of section heading, section and NOTE filed 2–9–2004; operative 2–9–2004 pursuant to Government Code section 11343.4 (Register 2004, No. 7).

§ 599.905. Answer.

Unless required by law or these regulations, no answer to the appeal need be filed. If an answer is filed prior to the hearing, a copy thereof shall be mailed by the Director of the Department of Personnel Administration to the appellant. If no answer is filed and none is required, every material allegation of the appeal is in issue.

NOTE: Authority cited: Sections 19815.4(d) and 19816, Government Code. Reference: Section 19815.4, Government Code.

HISTORY

1. Amendment of NOTE filed 2–9–2004; operative 2–9–2004 pursuant to Government Code section 11343.4 (Register 2004, No. 7).

§ 599.906. Hearings and Decisions.

(a) The following appeals shall be designated "nonmerit statutory appeals":

(1) requests for reinstatement after automatic resignation;

(2) appeals from layoffs, demotions, and transfers in lieu of layoff;

(3) protests of transfer;

(4) petition to set aside resignation;

(5) denial of merit salary adjustment;

(6) appeals of performance appraisal;

(7) appeals from denial of sick leave; and

(8) appeals from denial of out–of–class claims.

(b) Except as otherwise provided by statute or excluded by an applicable memorandum of understanding, each nonmerit statutory appeal shall be assigned to a presiding officer for investigation or hearing. The presiding officer assigned shall be the authorized representative of the Director and, as such, will be fully authorized and empowered to set such matters for hearing, grant or refuse extensions of time, issue subpoenas for witnesses, administer oaths, hold hearings, conduct investigations, and perform any and all other acts in connection with such proceedings that may be authorized by law or this article, subject to the following restrictions:

(1) Any such hearing or investigation shall comply with the administrative procedures for handling subpoenas set forth in Government Code Sections 18672 through 18674, except that all references to the "Board" or "Executive Officer" therein shall be understood to refer to the Director of the Department of Personnel Administration.

(2) The Director and/or his/her designee shall retain authority to approve, modify, or reject the presiding officer's decision regarding any appeal except as otherwise provided or excluded by a memorandum of understanding.

NOTE: Authority cited: Sections 19815.4(d) and 19816, Government Code. Reference: Sections 11440.10, 19815.4, 19818.8, 19818.16, 19832, 19836, 19842.5, 19859, 19992–19992.14, 19994.3, 19994.4, 19996.1, 19996.2 and 19997.14, Government Code; and *Johnston v. Department of Personnel Administration* (1987) 191 Cal.App.3d 1218.

HISTORY

1. Renumbering of former section 599.906 to section 599.908 and new section 599.906 filed 2–9–2004; operative 2–9–2004 pursuant to Government Code section 11343.4 (Register 2004, No. 7).

§ 599.907. Rehearing.

Within 30 days after service of a copy of a decision following hearing, any party may file a petition for rehearing with the Director. The petition shall be in writing and shall contain all the grounds upon which a rehearing shall be granted.

Within 30 days after such filing, the Director shall serve a copy of the petition on the other parties to the proceeding. Within 60 days after service of the petition for rehearing on the nonrequesting parties, the Director shall either grant or deny the petition in whole or in part.

Failure to act upon a petition within this 90–day period shall be deemed a denial of the petition.

If a petition is granted, the Director may set the matter for rehearing before an authorized representative or may reconsider the appeal based solely upon the existing record and arguments provided by the parties.

NOTE: Authority cited: Sections 19815.4(d) and 19816, Government Code. Reference: Section 19815.4, Government Code.

HISTORY

1. New section filed 2–9–2004; operative 2–9–2004 pursuant to Government Code section 11343.4 (Register 2004, No. 7).

§ 599.908. Dismissal of Appeals Not Brought to Hearing.

Any appeal referred or assigned to the Director of the Department of Personnel Administration shall be dismissed unless it is brought to hearing within three years after such appeal was filed with the Department of Personnel Administration except where the parties have filed a written stipulation specifically extending said three–year period.

NOTE: Authority cited: Sections 19815.4(d) and 19816, Government Code. Reference: Section 19815.4, Government Code.

HISTORY

1. Renumbering of former section 599.906 to new section 599.908, including amendment of section and NOTE, filed 2–9–2004; operative 2–9–2004 pursuant to Government Code section 11343.4 (Register 2004, No. 7).

§ 599.909. [Reserved].

§ 599.910. Decision Becomes Final When.

Unless a proper application for rehearing is made, every decision shall become final 30 days after service by the Department of Personnel Administration of a copy of such decision on the parties to the proceeding in which the decision is rendered.

NOTE: Authority cited: Sections 19815.4(d) and 19816, Government Code. Reference: Section 19815.4, Government Code.

HISTORY

1. Amendment of section and NOTE filed 2–9–2004; operative 2–9–2004 pursuant to Government Code section 11343.4 (Register 2004, No. 7).

Article 25.5. Work and Family Benefits—Excluded Employees

§ 599.911. Family Crisis Leave.

The State recognizes that on occasion it may be necessary for employees to take time off to attend to family crisis situations, including, but not limited to, divorce counseling, family or parenting conflict management, family–care urgent matters and/or emergencies. Subject to departmental operational needs, excluded employees as defined in Section 599.615(b) of these regulations, shall be permitted to use eligible leave credits to attend to family crisis situations.

(a) Eligible leave credits include annual leave, vacation, compensating time off (CTO), personal leave, holiday credits, and/or sick leave. If the employee has exhausted available leave credits, he/she may request unpaid leave. Sick leave credits may be used consistent with sick leave policies.

(b) Family is defined as the parent, spouse, or domestic partner that has been certified with the Secretary of State's Office in accordance with AB 26 (Chapter 588, Statutes of 1999 et seq.), son, daughter, or any child the employee stands *in loco parentis* to, grandchild, grandparent, brother, sister, or any person residing in the household.

(c) Requests for family crisis leave shall be in accordance with departmental policies and, except in emergencies, shall be made with reasonable notice to the employee's immediate supervisor.

(d) The employee may be required to provide substantiation to support his/her request for family crisis leave. The appointing power shall maintain the confidentiality of any employee requesting accommodation under this section.

(e) The appointing power shall consider requests from employees to adjust work hours or schedules or consider other flexible arrangements to participate in such activities in accordance with departmental policies and consistent with operational needs.

NOTE: Authority cited: Sections 3539.5 and 19815.4(d), Government Code. Reference: Section 3539.5, Government Code.

HISTORY

1. New article 25.5 (sections 599.911–599.913) and section filed 10–15–2001; operative 10–15–2001. Submitted to OAL for printing only pursuant to Government Code section 3539.5 (Register 2001, No. 42).
2. New section refiled with amendments 11–27–2001; operative 11–27–2001. Submitted to OAL for printing only pursuant to Government Code section 3539.5 (Register 2001, No. 48).

§ 599.912. Family Activity Leave.

The State recognizes that on occasion it may be necessary for employees to take time off to attend to family or school–related activities in which the employee's child is participating, including, but not limited to, plays, graduations, field trips, organized sports events, recitals, Scouts, 4–H, Junior Achievement, and Grange.

(a) Subject to departmental operational needs, and reasonable notice to the employee's supervisor, excluded employees as defined in Section 599.615(b) of these regulations, shall be permitted to use no less than twenty (20) hours per calendar year of accumulated eligible leave credits to attend family or school–related activities in which the employee's child is participating. Use of such leave shall not diminish the 40–hour leave entitlement provided under the Family School Partnership Act.

(b) Eligible leave credits include annual leave, vacation, compensating time off (CTO), personal leave, and/or holiday credits. They do not include sick leave. If the employee has exhausted available leave credits, he/she may request unpaid leave.

(c) Employee's child is defined as the employee's son, daughter, or any child the employee stands *in loco parentis* (to the child).

(d) Requests for family activity leave shall be in accordance with departmental policies. The employee may be required to provide substantiation to support the request to attend such activities.

(e) The appointing power shall consider requests from employees to adjust work hours or schedules or consider other flexible arrangements to participate in such activities, in accordance with departmental policies and consistent with operational needs.

NOTE: Authority cited: Sections 3539.5 and 19815.4(d), Government Code. Reference: Section 3539.5, Government Code.

HISTORY

1. New section filed 10–15–2001; operative 10–15–2001. Submitted to OAL for printing only pursuant to Government Code section 3539.5 (Register 2001, No. 42).
2. New section refiled with amendments 11–27–2001; operative 11–27–2001. Submitted to OAL for printing only pursuant to Government Code section 3539.5 (Register 2001, No. 48).

§ 599.913. Transfer of Leave Credits.

At the discretion of the appointing power, excluded employees as defined in Section 599.615(b) of these regulations, shall be permitted to transfer eligible leave credits between family members to care for a family member or another person residing in the immediate household.

(a) Eligible leave credits include annual leave, vacation, compensating time off (CTO), personal leave, and/or holiday credits. They do no include sick leave.

(b) Eligible leave credits may be transferred by a child, parent, spouse, domestic partner that has been certified with the Secretary of State's Office in accordance with AB 26 (Chapter 588, Statutes of 1999 et seq.), brother, sister, or other person residing in the immediate household.

(c) Eligible leave credits may be transferred between family members to care for the family member's child, parent, spouse, or domestic partner that has been certified with the Secretary of State's Office in accordance with AB 26 (Chapter 588, Statutes of 1999 et seq.), brother, sister, or other person residing in the immediate household who has a serious health condition, for the employee's own serious health condition as defined by the Family Medical Leave Act (FMLA), or for parental leave to care for a newborn or adopted child.

(d) To be eligible to receive leave credits, the receiving employee must have exhausted all of his/her leave credits.

(e) The donating employee must maintain a minimum balance of 80 hours of paid leave time.

(f) Transfer of eligible leave credits may be interdepartmental in accordance with the policies of the receiving department.

(g) Donations must be in one–hour increments and will be reflected as an hour–for–hour addition to the vacation or annual leave balance of the receiving employee.

(h) Use of donated credits shall normally not exceed a maximum of three (3) months. However, if approved by the receiving department, the total leave credits received may be up to six (6) months.

(i) Donations shall be made on a form to be supplied by the employee's department, signed by the donating employee, and verified by the donating department. When donations are used, they will be processed based on date and time received (first in, first used). Unused donations shall be returned to the appropriate donor.

NOTE: Authority cited: Sections 3539.5 and 19815.4(d), Government Code. Reference: Section 3539.5, Government Code.

HISTORY

1. New section filed 10–15–2001; operative 10–15–2001. Submitted to OAL for printing only pursuant to Government Code section 3539.5 (Register 2001, No. 42).
2. New section refiled with amendments 11–27–2001; operative 11–27–2001. Submitted to OAL for printing only pursuant to Government Code section 3539.5 (Register 2001, No. 48).

Article 26. Employee Benefits—Excluded Employees

§ 599.920. Health Benefit Contributions—Excluded Employees.

NOTE: Authority cited: Sections 3539.5 and 19815.4, Government Code. Reference: Sections 19815.4(d) and 22825.1, Government Code.

HISTORY

1. New section filed by the Department of Personnel Administration with the Secretary of State on 8–20–84; effective upon filing. Submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 85, No. 18).
2. Editorially corrects printing error of subsection (a)(2) (Register 85, No. 29).
3. Repealer filed by Department of Personnel Administration with the Secretary of State on 9–9–85; effective upon filing. Submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 85, No. 41).
4. Change without regulatory effect amending article 26 heading filed 6–25–92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 26).
5. Change without regulatory effect amending section heading and NOTE filed 7–21–92; operative 7–21–92 pursuant to title 1, section 100, California Code of Regulations (Register 92, No. 30).

§ 599.920.5. Domestic Partner Coverage for Health, Dental and Vision Benefits — Excluded Employees.

(a) Effective January 1, 2000, an employee who is either (1) excluded from the definition of State employee in subdivision (c) of Section 3513; or (2) a nonelected officer or employee of the executive branch of government who is not a member of the civil service may enroll an eligible domestic partner as a family member in the employer sponsored health, dental and vision plans. To be eligible, the employee and the domestic partner must file a Declaration of Domestic Partnership with the Secretary of State's Office and present a copy of the approved declaration the personnel office.

(b) An excluded employee may enroll dependent children of the domestic partner provided those children meet the requirements of economic dependents as defined by the California Public Employees' Retirement System.

(c) Upon termination of such domestic partnership, the employee must file a Termination of Domestic Partnership and must also notify the personnel office and remove the domestic partner and economic dependents (unless they continue to be economic dependents of the employee) from the health, dental and vision plans.

NOTE: Authority cited: Sections 3539.5, 19849.1(a) and 19849.11, Government Code. Reference: Section 22875(d), Government Code.

HISTORY

1. New section filed 12–21–99; operative 1–1–2000. Submitted to OAL for printing only pursuant to Government Code section 3539.5 (Register 2000, No. 5).

§ 599.920.6. Rural Health Care Equity Fund Eligibility — Excluded Employees.

(a) Effective January 1, 2000, an employee who is either (1) excluded from the definition of State employee in subdivision (c) of Section 3513; or (2) a nonelected officer or employee of the executive branch of government who is not a member of the civil service is eligible for the provisions of section 22825.01 of the Government Code.

(b) Such employees shall also be eligible for a secondary reimbursement each fiscal year as follows:

(1) Any monies remaining at the end of a fiscal year in any individual account shall revert to a pooled account by CBID. For excluded employees, the CBID pool shall be one pool of all eligible excluded employees.

(2) The secondary distribution shall be on a *pro–tanto* basis proportionate to the secondary reimbursements requested by members exceeding their annual monetary allotment.

(3) Any monies remaining in the CBID pool after the *pro–tanto* distribution shall "roll" into the following year CBID pool for subsequent *pro–tanto* distribution(s).

NOTE: Authority cited: Sections 3539.5, 19849.1(a) and 19849.11, Government Code. Reference: Section 22825.01, Government Code.

HISTORY

1. New section filed 12–21–99; operative 1–1–2000. Submitted to OAL for printing only pursuant to Government Code section 3539.5 (Register 2000, No. 5).

§ 599.921. Reimbursement of Bar Fees—Nonrepresented Employees.

A nonrepresented employee is defined in Section 599.619 of these regulations.

(a) Commencing with the 1984 calendar year, when the appointing power certifies that the actual practice of law is required for the performance of the duties of a specific position, the nonrepresented employee shall be reimbursed for the cost of the annual membership fee of the State Bar Association as set forth in Business and Professions Code Section 6140.

(b) Job–related local or specialty bar dues may be reimbursed at each appointing power's discretion for each employee for whom State Bar membership is required as a condition of employment. Any amount to be reimbursed shall be determined by each appointing power. If local or specialty bar dues are reimbursed for less than full–time employees, the reimbursed amount shall be prorated.

(c) Such reimbursement will be made after the employee has submitted a claim for reimbursement with substantiation that payment has been made. Substantiation of payment shall include a copy of the annual fee statement issued by the State Bar Association and a copy of the employee's membership card.

NOTE: Authority cited: Sections 3517.7, 19815.4(d), 19819.1 and 19995.1, Government Code. Reference: Sections 19815.2, 19819.1, 19829 and 19995.1, Government Code.

HISTORY

1. Repealer of former Section 599.921 and new Article 26 (Sections 599.921 and 599.922) filed 2–4–85; effective thirtieth day thereafter (Register 85, No. 6). For prior history, see Registers 84, No. 28 and 84, No. 6.
2. Editorial correction relocating Article 26 (Sections 599.921 and 599.922) to appear in numerical sequence (Register 85, No. 14).
3. Relettering of former subsection (b) to subsection (c) and new subsection (b) filed by Department of Personnel Administration with Secretary of State on 12–30–87; operative 12–30–87. Submitted to OAL for printing only pursuant to Government Code Section 11343.8 (Register 88, No. 7).

§ 599.922. Reimbursement of Fees for Professional Licenses—Nonrepresented Employees.

(a) Professional Engineering. Commencing with the 1983–84 fiscal year, when the appointing power determines that the possession of a current Professional License in occupational fields of engineering is required by the functions of a specific position or is beneficial to the performance of an employee's duties, a nonrepresented employee shall be reimbursed for the actual cost of the application or renewal fees and shall receive up to 8 hours of State time without loss of compensation for each examination day for such Professional Licenses. Such occupational fields include:

(1) Engineer;
(2) Architect;
(3) Landscape Architect;
(4) Engineering Geologist;
(5) Land Surveyor; and
(6) Engineer–in–training.

(b) Professional Scientist. Commencing with the 1984–85 fiscal year, when the possession of a current Professional License in classes within the professional scientific occupational field is required by State or Federal law, a permanent full–time nonrepresented employee shall be reim-

bursed for actual cost of the renewal fees for such Professional Licenses. Such classes within the occupational field of Professional Scientist include:

(1) Chief, Bureau of Animal Health
(2) Chief, Agricultural Veterinarian Laboratory Services
(3) Sanitarian IV
(4) Veterinary Medical Officer IV, Animal Health
(5) Veterinary Medical Officer IV, Pathology
(6) Chief Public Health Veterinarian
(7) Public Health Microbiologist II
(8) Senior Geologist (Supervisor)
(9) Supervising Geologist
(10) Principal Geologist
(11) State Geologist CEA

(c) Nursing. Commencing with the 1984–85 fiscal year, when the possession of a current Professional License in a class within the occupational field of nursing is required by State or Federal Law, a permanent full–time nonrepresented employee shall be reimbursed for the actual cost of the renewal fees for such Professional Licenses. Such classes within the occupational field of Nursing include:

(1) Coordinator, Nursing Services
(2) Supervising Nurse III
(3) Supervising Nurse II
(4) Nursing Coordinator
(5) Psychiatric Nursing Education Director
(6) Supervising Psychiatric Nurse
(7) Registered Nurse III
(8) Public Health Nurse IV
(9) Public Health Nurse III
(10) Supervising Nursing Education Consultant
(11) Nursing Education Consultant, Veterans Home
(12) Health Care Services Nurse III
(13) Nursing Consultant, Program Review Unit

(d) Medical and Social Services Support. Commencing with the 1984–85 fiscal year, when possession of a current Professional License in a class within the occupational field of medical and social services support is required by State or Federal law, a permanent full–time nonrepresented employee shall be reimbursed for the actual cost of the renewal fees for such Professional Licenses. This reimbursement shall apply to all appropriate employees in the class of Supervising Clinical Laboratory Technologist.

(e) Physician, Dentist and Podiatrist. Commencing with the 1984–85 fiscal year, when possession of a current Professional License in any of the occupational fields of medicine, dentistry or podiatry is required by State or Federal law as a condition of employment, a permanent full–time nonrepresented employee shall be reimbursed for the actual cost of the renewal fees for such Professional Licenses. For less than full–time employees, the amount of the renewal fee which is to be reimbursed shall be on a pro rata basis which corresponds to the employee's time base.

Such classes within the occupational fields of physician, dentist and podiatrist include:

(1) Chief, Medical Services Correctional Program, C.E.A.
(2) Chief Medical Officer, Veterans Home and Medical Center
(3) Program Director, General Medical and Surgical Program
(4) Chief Medical Officer, California Institution for Women
(5) Chief Medical Officer, Correctional Institution
(6) Chief of Medicine, Veterans Home and Medical Center
(7) Office of Program Review Consultant (Medical), State Hospitals
(8) Chief Physician and Surgeon
(9) Director, Health Training Center, Department of Mental Health
(10) Coordinator of Professional Education, Community Psychiatry Training Center, Department of Mental Health
(11) Executive Director, Hospital for the Mentally Disabled, C.E.A.
(12) Medical Director, State Hospital
(13) Medical Director (Chief Deputy), C.E.A.
(14) Deputy Superintendent, Clinical Services, Correctional Facility
(15) Program Director—Medical—
(16) Program Assistant—Medical—
(17) Executive Director, Hospital for the Developmentally Disabled, C.E.A.
(18) Chief of Professional Education, Mental Hospital
(19) Chief of Professional Education, Developmentally Disabled Hospital
(20) Chief, Laboratory Services Branch
(21) Assistant Superintendent, Psychiatric Services, Correctional Facility
(22) Chief Psychiatrist, Correctional Facility
(23) Pathologist
(24) Chief, Office of Long–Term Care and Aging
(25) Assistant Director (Medical), Department of Health Services, C.E.A.
(26) Deputy Director, Public and Environmental Health Division
(27) Chief, Office of County Health Services
(28) Chief, Preventive Medical Services Branch
(29) Chief, Bureau of Maternal and Child Health
(30) Chief, Crippled Children Services Section
(31) Chief, Infectious Disease Section
(32) Chief, Family Health Services Section
(33) Public Health Medical Officer III
(34) Public Health Medical Officer III—Epidemiology
(35) Public Health Medical Officer III—Maternal and Child Health
(36) Regional Medical Coordinator
(37) Chief, Viral and Rickettsial Diseases Laboratory
(38) Medical Officer, State Compensation Insurance Fund, C.E.A.
(39) Medical Program Consultant, Department of Health Services
(40) Medical Consultant II—Department of Health Services
(41) Medical Director, Employment Development Department, C.E.A.
(42) Medical Director, Division of Industrial Accidents, C.E.A.
(43) District Medical Director, Division of Industrial Accidents
(44) Medical Consultant, State Board of Medical Quality Assurance
(45) Medical Officer, State Personnel Board, C.E.A.
(46) Chief Medical Consultant, Board of Medical Quality Assurance
(47) Assistant Medical Officer, State Personnel Board
(48) Chief Medical Consultant, Department of Rehabilitation
(49) Chief Dentist
(50) Podiatrist

(f) Psychiatric, Health and Social Services. Commencing with the 1984–85 fiscal year, when the possession of a current Professional License in the occupational fields of psychiatric, health or social services is required by State or Federal law as a condition of employment, a permanent full–time nonrepresented employee shall be reimbursed for the actual cost of the renewal fees for such licenses. For less than full–time employees, the amount of the renewal fee which is to be reimbursed shall be on a pro rata basis which corresponds to the employee's time base.

Such classes within the occupational fields of psychiatric, health or social services include:

(1) Unit Supervisor
(2) Program Assistant—Medical
(3) Program Director—Medical
(4) Pharmaceutical Consultant II
(5) Pharmacist II
(6) Pharmacist Services Manager
(7) Quality Assurance Director
(8) Audiologist II
(9) Supervising Psychiatric Social Worker II
(10) Supervising Psychiatric Social Worker II (Mental Health)
(11) Supervising Psychiatric Social Worker I
(12) Supervising Psychiatric Social Worker I (Mental Health)
(13) Senior Psychologist
(14) Chief, Child Health and Disability Branch

(15) Chief, Radiological Health Section
(16) Chief, Microbial Health Section
(17) Chief, Laboratory Field Services
(18) Executive Secretary, Research Advisory Panel
(19) Assistant Executive Secretary, Board of Pharmacy
(20) Supervising Inspector, Board of Pharmacy

(g) Professional Foresters. Commencing with the 1985–86 fiscal year, when the possession of a current professional license in a class within the forestry occupational field is required as a condition of employment, a permanent full–time non–represented employee shall be reimbursed for actual cost of renewal fees for such professional license. Such classes within the occupation of professional forester include:

(1) Forester II
(2) Forester III
(3) Senior Forest Property Appraiser

(h) Education—Commencing with the 1985/86 fiscal year, when possession of a current credential in a class within the education occupational field is required as a condition of employment, a full time, permanent, non–represented employee shall be reimbursed the fee for renewal of such credential. Such classes within the occupational field of education include:

(1) Superintendent California School for the Deaf
(2) Superintendent California School for the Blind
(3) Superintendent Diagnostic School for the Neurologically Handicapped Children
(4) Principal Diagnostic School for the Neurologically Handicapped Children
(5) Principal School for the Deaf
(6) Principal School for the Blind
(7) Supervising Teacher—Fiscal Year Employees/School for the Deaf/Department of Education
(8) Supervising Teacher, Management/School for Deaf/Department of Education
(9) Supervising Teacher/Diagnostic School/Department of Education
(10) Supervising Teacher/School for the Blind/Department of Education
(11) Supervising Teacher/School for the Deaf/Department of Education
(12) Supervising Teacher, Management/School for Blind/Department of Education
(13) Adult Education Administrator II
(14) Assistant Superintendent of Public Instruction—Director of Vocational Education
(15) Assistant Director of Child Development
(16) Assistant Chief Bureau of Intergroup Relations
(17) Assistant Superintendent of Public Instruction for Child Development
(18) Assistant Superintendent of Public Instruction for Special Education
(19) Assistant Superintendent of Public Instruction for General Education
(20) Bilingual–Bicultural Education Administrator
(21) Chief of Program Evaluation Department of Education
(22) Chief, Bureau of Child Nutrition Services
(23) Chief, Bureau of Administrative Services
(24) Chief, Bureau of Intergroup Relations
(25) Education Administrator II
(26) Migrant Education Administrator I
(27) School Approvals Administrator I
(28) School Approvals Administrator II
(29) Secondary Education Administrator I
(30) Administrator of School Apportionments, Grants and Fiscal Assistance
(31) Vocational Education Administrator II
(32) Adult Education Administrator I
(33) Agriculture Education Administrator I
(34) Assistant Field Representative II School Administration
(35) Bilingual–Bicultural Education Administrator II
(36) Business Education Administrator I
(37) Child Development Administrator I
(38) Compensatory Education Administrator I
(39) Education Administrator I
(40) Field Representative School Administration
(41) Homemaking Education Administrator I
(42) Industrial Education Administrator I
(43) Migrant Education Administrator I
(44) Publications Consultant Department of Education
(45) Special Education Administrator I Regional Deaf–Blind Center
(46) Special Education Administrator I
(47) Supervising Field Representative School Administration
(48) Vocational Education Administrator I
(49) Chief of Education, Department of Corrections
(50) Assistant Chief of Education, Department of Corrections
(51) Supervisor of Compensatory Education Program
(52) Supervisors of Academic Instruction—Correctional Facility
(53) Supervisor of Correctional Education Programs
(54) Supervisor of Vocational Instruction
(55) Principal Librarian
(56) Education Administrator for Special Programs
(57) Education Program Supervisor, Youth Authority
(58) Supervisor of Compensatory Education Program
(59) Vocational Education Supervisor, Correctional Facility

(i) Dietetics—Commencing with the 1985/86 fiscal year, when current registration is required as a condition of employment in a class within the Dietetic occupational field, a full time, permanent, non–represented employee shall be reimbursed the fee for such registration. Such classes within the Dietetic occupational field include:

(1) Nutrition Education and Training Consultant (Supervisory)
(2) Supervising Child Nutrition Consultant
(3) Director of Dietetics
(4) Departmental Food Administrator, Special Schools
(5) Managers, Commodity Processing Programs

(j) Such reimbursement will be made after the employee has submitted a claim for reimbursement with substantiation that payment has been made. Substantiation of payment shall include:

(1) A copy of the receipt for employees renewing licenses; or,
(2) A copy of the application for examination and a copy of the notice admitting the employee to the examination for employees applying for licenses.

NOTE: Authority cited: Sections 3517.8, 19815.4(d) and 19819.1, Government Code. Reference: Sections 19815.2, 19819.1 and 19829, Government Code.

HISTORY

1. Repealer and new section filed 2–4–85; effective thirtieth day thereafter (Register 85, No. 6). For prior history, see Registers 84, No. 28 and 84, No. 6.
2. Amendment filed by the Department of Personnel Administration with the Secretary of State on 11–21–84; effective upon filing. Submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 85, No. 18).
3. Amendment filed by Department of Personnel Administration with the Secretary of State on 9–20–85; effective upon filing. Submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 85, No. 41).
4. Amendment filed by the Department of Personnel Administration with the Secretary of State on 11–15–85; effective upon filing. Submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 86, No. 2).
5. Amendment of subsection (e)(20) and NOTE and new subsection (g)(3) filed 11–10–92; operative 11–1–92 (Register 92, No. 46). Submitted for printing only pursuant to Government Code section 3539.5.
6. Editorial corrections (Register 95, No. 40).

§ 599.922.1. Reimbursement of Fees for Applicator Certificates.

The appointing power may reimburse nonrepresented employees for filing, examination and renewal fees for qualified applicator certificates as defined in Food and Agriculture Code Section 12201 et seq. provided that the employee is authorized in advance by the appointing power to take the examination or renew the certificate because of their assigned

duties and the employee successfully passes the required examination and is issued the certificate.

NOTE: Authority cited: Section 3517.8, Government Code. Reference: Section 3517.8, Government Code.

HISTORY

1. New section filed by the Department of Personnel Administration with the Secretary of State on 1–20–87; effective upon filing. Submitted to OAL for printing only pursuant to Government Code Section 11343.8 (Register 87, No.10).

§ 599.922.2. Professional Society Dues License Fees—Nonrepresented Employees.

A nonrepresented employee is defined in Section 599.619 of these regulations.

Commencing with the 1988 calendar year, with approval of the appointing power, nonrepresented employees may be reimbursed up to $100.00 annually for membership dues of a professional organization or for a job-related professional license fee (such as the Certified Public Accountant (CPA) license fee) which engages in activities directly related to the employee's scientific or professional discipline.

If the employee's job requires a professional license, upon appointing power approval, the employee may receive both professional dues and license fee reimbursement not to exceed $100.00 annually for each.

NOTE: Authority cited: Sections 3517.8 and 19815.4(d), Government Code. Reference: Sections 19829 and 19995.1, Government Code.

HISTORY

1. New section filed by Department of Personnel Administration with Secretary of State on 12–30–87; operative 12–30–87. Submitted to OAL for printing only pursuant to Government Code Section 11343.8 (Register 88, No.7).
2. Amendment filed by the Department of Personnel Administration with the Secretary of State on 8–1–89; operative 8–1–89. Submitted to OAL for printing only pursuant to Government Code Section 11343.8 (Register 89, No. 37).

§ 599.922.3. Certified Public Accountant/Certified Internal Auditor Professional Competency Bonus—Excluded Employees.

An excluded employee is defined in section 599.615(b) of these regulations.

(a) Effective August 1, 1989, with the approval of the appointing power, and subject to the criteria listed in Section (b), an excluded employee may receive a bonus for passing the written portion of the Certified Public Accountant (CPA) examination or the Certified Internal Auditor (CIA) examination.

(b) The bonus criteria shall include:

(1) The bonus shall not exceed $4,800 regardless of the number of certifications received and shall be paid in three equal installments of $1,600 each at intervals of 12 qualifying pay periods. The first installment shall be paid 12 qualifying pay periods after the appointing power has verified the examination has been passed. The bonus will not be prorated for service of less than the full 12 qualifying pay periods.

(2) In order to be eligible for the bonus, the excluded employee's classification for each qualifying pay period must include, or the excluded employee must be responsible for the supervision of other excluded employees whose duties include, internal auditing or fiscal examination as a major duty and for which the minimum qualification requires professional accounting or auditing experience or successful completion of prescribed professional accounting courses given by an accredited college or university, including courses in elementary and advanced accounting, auditing and cost accounting.

(3) The excluded employee must have passed the examination after November 30, 1986. No excluded employee who has received compensation based on Government Code Section 19836 shall be eligible for this bonus.

(c) An excluded employee who transfers to another State department and otherwise continues to qualify for the bonus must request the new department to continue to qualify for the bonus must request the new department to continue the bonus on schedule. The new department may or may not agree to continuation of the bonus. If the new department agrees, it assumes responsibility for the remaining installments. In any case the bonus shall not exceed $4,800.

(d) An employee who is receiving a Professional Competency Bonus under the provision of the Bargaining Unit 01 Memorandum of Understanding, and then is appointed to an excluded classification but otherwise continues to qualify, may continue to receive the bonus on schedule with the approval of the appointing power. Each remaining installment amount shall be based on the excluded employee's collective bargaining identification designation as of the first day of the twelfth qualifying pay period for that twelve (12) pay period interval. In any case, the bonus shall consist of only three (3) installments.

(e) An excluded employee who is required to possess and maintain a California Certified Public Accountant license as a condition of employment, as specified in the appropriate class specification, is ineligible for the Professional Competency Bonus except that employees already receiving this bonus prior to September 8, 1992 will be allowed to continue the bonus to the maximum amount allowable.

(f) A Professional Competency Bonus shall not be considered "compensation" for the purposes of retirement.

NOTE: Authority cited: Sections 3539.5 and 19815.4(d), Government Code. Reference: Section 19829, Government Code.

HISTORY

1. New section filed by the Department of Personnel Administration with the Secretary of State on 8–1–89; operative 8–1–89. Submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 89, No. 37).
2. Change without regulatory effect amending section heading, text and NOTE and redesignating subsections (a)–(e) filed 7–21–92; operative 7–21–92 pursuant to title 1, section 100, California Code of Regulations (Register 92, No. 30).
3. New subsection (f) filed 9–1–92; operative 9–8–92. Submitted to OAL for printing purposes only pursuant to Government Code section 3539.5 (Register 92, No. 36).
4. Amendment of subsection (d), relettering and amendment of subsection (f) to (e) and relettering subsection (e) to (f) filed 9–25–92; operative 9–8–92 pursuant to Government Code section 3539.5 (Register 92, No. 39).

§ 599.923. Bereavement Leave—Excluded Employees.

An excluded, permanent employee is defined in section 599.615(b).

(a) An excluded, permanent employee shall receive bereavement leave with pay in accordance with the provisions of section 19859.3 of the Government Code.

NOTE: Authority cited: Sections 3539.5, 19815.4(d) and 19849.13, Government Code. Reference: Section 19859.3, Government Code.

HISTORY

1. New section filed by the Department of Personnel Administration with the Secretary of State on 8–30–84; effective upon filing. Submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 85, No. 18).
2. Amendment filed by the Department of Personnel Administration with the Secretary of State on 9–20–85; effective upon filing. Submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 85, No. 41).
3. Amendment filed by the Department of Personnel Administration with the Secretary of State on 11–15–85; effective upon filing. Submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 86, No. 2).
4. Amendment filed by the Department of Personnel Administration with the Secretary of State on 7–31–87; operative 7–31–87. Submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 87, No. 35).
5. Change without regulatory effect amending section heading, text and NOTE and designating subsection (a) filed 7–21–92; operative 7–21–92 pursuant to title 1, section 100, California Code of Regulations (Register 92, No. 30).

§ 599.924. Health and Safety Incentive Award Programs—Excluded Employees.

An excluded employee is defined in section 599.615(b).

(a) Upon the request of appointing powers, the Department of Personnel Administration may establish, for excluded employees, health safety incentive award programs comparable to those negotiated for subordinate, represented employees. Such requests shall include a statement of the purpose of the program, the employees and/or classifications eligible for participation, the award criteria and the type and number of awards to be presented.

NOTE: Authority cited: Sections 3539.5 and 19815.4(d), Government Code. Reference: Section 19261, Government Code.

HISTORY

1. Amendment filed by Department of Personnel Administration with the Secretary of State on 9–20–85; effective upon filing. Submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 85, No. 41).
2. Change without regulatory effect amending section heading, text and NOTE and designating subsection (a) filed 7–21–92; operative 7–21–92 pursuant to title 1, section 100, California Code of Regulations (Register 92, No. 30).

§ 599.924.5. Health and Welfare Agency Data Center Achievement Fund.

Excluded employees, as defined in Section 3527(b) of the Government Code, who are serving in the Health and Welfare Agency Data Center (HWDC), shall be eligible to participate in group recognition activities funded by the HWDC Achievement Fund. In accordance with this rule, and applicable collective bargaining agreements covering HWDC's represented employees, this fund is established to recognize center-wide achievements as follows:

(a) The Achievement Fund will be in lieu of HWDC participation in the Superior Accomplishment Award authorized by Section 599.664(j), (2)–(3) and the Supervisor Performance Award authorized by Section 599.797.

(b) The Achievement Fund will be established in an amount equivalent to that which would otherwise be available to HWDC through the Superior Accomplishment Award and the Supervisor Performance Award programs, but shall not exceed one dollar per month per employee, or a total of $5000 per fiscal year, whichever is less.

(c) The Achievement Fund will be used to recognize center-wide achievements with group events, plaques or mementoes, or other appropriate forms of group recognition. The Achievement Fund shall not be used for individual bonuses or recognition.

(d) An Achievement Fund Committee will be established to recommend to the Director of the Health and Welfare Agency Data Center achievements for recognition and to propose the type of recognition. The Director or his or her designee shall authorize use of the Achievement Fund.

NOTE: Authority cited: Section 3539.5, Government Code. Reference: Section 3539.5.

HISTORY

1. New section filed 4–19–96; operative 4–19–96. Submitted to OAL for printing only pursuant to Government Code section 3539.5 (Register 96, No. 23).

§ 599.925. Catastrophic Leave—Excluded Employees.

At the discretion of the appointing power, excluded employees as defined in section 3527(b) of the Government Code will be permitted to transfer eligible leave credits to an excluded employee when a catastrophic illness or injury occurs.

(a) The following definitions shall be used in the application of this rule:

(1) Catastrophic illness or injury is defined as an illness or injury which is expected to incapacitate the employee and which creates a financial hardship because the employee has exhausted all of his/her sick leave and other paid time off. Catastrophic illness or injury may also include an incapacitated family member if this results in the employee being required to take time off from work for an extended period of time to care for the family member and the employee has exhausted all of his/her sick leave and other paid time off.

(2) Eligible leave credits include annual leave, vacation, compensating time off (CTO) and/or holiday leave credits. They do not include sick leave.

(b) Eligible leave credits may be donated for a catastrophic illness or injury if all the following requirements are met:

(1) upon the request of an employee;

(2) upon determination by the department director (or his/her designee) that the employee in the department is unable to work due to the employee's or family member's catastrophic illness or injury; and,

(3) the employee has exhausted all paid leave credit.

(c) If the transfer of eligible leave credits is approved by the department's director or designee, any excluded employee in that agency may, upon written notice to the Personnel Office, donate eligible leave credits at a minimum of one hour. Donations thereafter must be in whole hour increments. Donations will be reflected as an hour for hour deduction from the leave balance of the donating employee. When transferring eligible leave credits, the agency should assure that only credits that may be needed are transferred. An excluded employee may donate eligible leave credits to a represented employee and may be the recipient of eligible leave credits donated by a represented employee. Transfer of eligible leave credits may be interdepartmental in accordance with the policies of the receiving department.

(d) In order to receive donated leave credits, an excluded employee must provide appropriate verification of illness or injury as determined by the agency. An excluded employee eligible for this program will have any time which is donated credited to his/her account in one hour increments. Donated credits will be reflected as an hour–for–hour addition to the vacation or annual leave balance of the receiving employee. Use of donated credits may not exceed a maximum of twelve (12) continuous months for any one catastrophic illness. The total amount of leave credits donated may not exceed an amount sufficient to insure the continuance of regular compensation. All such transfers are irrevocable. An excluded employee who receives time through this program shall use any leave credits he/she continues to accrue on a monthly basis prior to receiving time from this program.

NOTE: Authority cited: Sections 3517.8, 19815.4(d), 19816 and 19991.13, Government Code. Reference: Section 3517.8, Government Code.

HISTORY

1. New section filed by the Department of Personnel Administration with the Secretary of State on 9–6–85; effective upon filing. Submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 85, No. 41).
2. Amendment filed by the Department of Personnel Administration with the Secretary of State on 11–1–88; operative 11–1–88. Submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 88, No. 52).
3. Amendment filed by the Department of Personnel Administration with the Secretary of State on 4–5–89; operative 4–5–89. Submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 89, No. 19).
4. Amendment of section filed 5–29–91; operative 5–29–91. Submitted to OAL for printing only pursuant to Government Code section 3539.5 (Register 91, No. 43).
5. Amendment of section heading, opening paragraph and subsections (c)–(d) filed 5–12–93; operative 5–12–93. Submitted to OAL for printing only pursuant to Government Code section 3539.5 (Register 93, No. 20).
6. Amendment of subsections (c) and (d) filed 8–1–97; operative 8–1–97. Submitted to OAL for printing only pursuant to Government Code section 3539.5 (Register 97, No. 31).
7. Editorial correction of HISTORY 3 (Register 2006, No. 3).
8. Amendment of subsections (b) and (c) and amendment of NOTE filed 12–30–2005; operative 12–30–2005. Submitted to OAL for printing only pursuant to Government Code section 3539.5 (Register 2006, No. 3).

§ 599.925.1. Catastrophic Leave for Natural Disaster—Nonrepresented Employees.

At the discretion of the appointing power, nonrepresented employees as defined in section 599.619 will be permitted to transfer eligible leave credits to an employee when a natural disaster occurs.

(a) The following conditions shall apply:

(1) Catastrophic leave for a natural disaster shall be leave for an employee who faces financial hardship because the employee has exhausted all of his/her eligible leave and is unable to work due to the effect of the natural disaster on the employee's principal residence.

(2) The employee resides in one of the counties where a State of Emergency exists as declared by the Governor.

(3) Eligible leave credits include annual leave, vacation, compensating time off (CTO) and/or holiday leave credits. They do not include sick leave.

(b) Eligible leave credits may be donated for catastrophic leave for a natural disaster:

(1) upon the request of an employee;

(2) upon determination by the department director or designee that the employee in the department is unable to work due to the effects of the natural disaster on the employee's principal residence; and

(3) the employee has exhausted all eligible leave credits.

(c) If the transfer of eligible leave credits is approved by the department's director or designee, any nonrepresented employee in that agency may, upon written notice to the Personnel Office, donate eligible leave credits at a minimum of one hour. Donations thereafter must be in whole hour increments. Donations will be reflected as an hour–for–hour deduction from the leave balance of the donating employee. When transferring eligible leave credits, the agency should assure that only credits that may

be needed are transferred. A nonrepresented employee may donate eligible leave credits to a represented employee. A nonrepresented employee who is designated managerial as defined in Government Code section 3513(e) or supervisory as defined in Government Code section 3522.1 may not receive donated eligible leave credits from a represented employee except in cases of extreme hardship or other compelling circumstances as approved by the Director of the Department of Personnel Administration. Transfer of eligible leave credits may be interdepartmental in accordance with the policies of the receiving department.

(d) In order to receive donated leave credits, a nonrepresented employee must provide appropriate verification as determined by the agency. A nonrepresented employee eligible for this program will have any time which is donated credited to his/her account in one hour increments. Donated credits will be reflected as an hour–for–hour addition to the vacation or annual leave balance of the receiving employee. Use of donated credits may not exceed three (3) continuous months for any one occurrence; however, if approved by the appointing authority, use of donated credits may be for six (6) continuous months.

The total amount of leave credits donated may not exceed an amount sufficient to insure the continuance of regular compensation. All such transfers are irrevocable. A nonrepresented employee who receives time through this program shall use any leave credits he/she continues to accrue on a monthly basis prior to receiving time from this program.

NOTE: Authority cited: Sections 3517.8, 19815.4(d), 19816 and 19849,13, Government Code. Reference: Section 3517.8, Government Code.

HISTORY

1. New section filed by the Department of Personnel Administration with the Secretary of State on 11–3–89; Operative 11–3–89. Submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 89, No. 49).
2. Amendment of section filed 5–29–91; operative 5–29–91. Submitted to OAL for printing only pursuant to Government Code section 3539.5 (Register 91, No. 43).
3. Amendment of subsections (c) and (d) filed 8–1–97; operative 8–1–97. Submitted to OAL for printing only pursuant to Government Code section 3539.5 (Register 97, No. 31).

§ 599.925.5. Contributory Time Bank—Excluded Employees.

An excluded employee is defined in Section 599.615(b).

The Department of Personnel Administration may establish a contributory time bank for the classifications of Communications Supervisors I/II, California Highway Patrol. The purpose of this time bank is to allow excluded employees in these classifications to voluntarily contribute compensating time off (CTO) hours, holiday, annual leave, personal leave or vacation credits to be used by other excluded employees identified by their employee organization for purposes related to supervisory organization matters. These time banks shall be established and administered as follows:

(a) The appointing power shall establish the procedures governing the administration of the time bank.

(b) The use of the time bank shall not conflict with the operations of the State employer.

(c) Donations to the bank are irrevocable.

(d) Denial of bank time shall not be subject to appeal or subject to the excluded employee grievance procedure in Section 599.859.

NOTE: Authority cited: Sections 3539.5 and 19815.4(d), Government Code. Reference: Section 3539.5, Government Code.

HISTORY

1. New section filed 11–2–92; operative 11–2–92. Submitted to OAL for printing only pursuant to Government Code section 3539.5 (Register 92, No. 45).

§ 599.926. Class I and Class II Driver's License Medical *Examination* Reimbursement—Nonrepresented Employees.

Upon the request of appointing powers, the Department of Personnel Administration may authorize the payment of the actual cost of medical examinations for non–represented employees required to possess either a Class I or Class II California Driver's License. To be eligible for such reimbursement, the employee must either (1) receive their exams from a contractor physician or clinic; or (2) receive advance approval to be examined by a personal physician for a reasonable cost.

NOTE: Authority cited: Sections 3517.8 and 19815.4(d), Government Code.

HISTORY

1. New section filed by Department of Personnel Administration with the Secretary of State on 9–20–85; effective upon filing. Submitted to OAL for printing only pursuant to Government Code Section 11343.8 (Register 85, No. 41).

§ 599.927. Vision Care Plan—Nonrepresented Employees.

A Non–Represented Employee is defined in Section 599.619.

The Department may establish and provide funding for a Vision Care Insurance Program for eligible non–represented employees. Eligible employees are defined as:

(1) All permanent employees appointed half–time or more for over six months;

(2) Permanent Intermittent employees who work a minimum of 480 hours in each six month period ending each June 30th or December 31st; or

(3) Limited Term or TAU appointees with prior continuous permanent status.

The Vision Care Insurance Program shall be the State's plan and provide for annual eye examinations and other services including frames and lenses. The department shall determine employee co–payment amounts for eye examinations and for frames and lenses.

NOTE: Authority cited: Sections 3517.8, 19815.4(d) and 19849.11, Government Code.

HISTORY

1. New section filed by Department of Personnel Administration with the Secretary of State on 9–20–85; effective upon filing. Submitted to OAL for printing only pursuant to Government Code Section 11343.8 (Register 85, No. 41).

§ 599.928. Sick Leave Restoration.

NOTE: Authority cited: Sections 3539.5 and 19815.4(d), Government Code. Reference: Section 19849.13, Government Code.

HISTORY

1. New section filed by Department of Personnel Administration with the Secretary of State on 9–20–85; effective upon filing. Submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 85, No. 41).
2. Change without regulatory effect repealing text and amending NOTE filed 6–25–92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 26).

§ 599.929. Increased 1959 Survivor Benefit—Excluded Employees.

Excluded employees as defined in section 599.615(b) who are eligible for the 1959 Survivor Benefit will be covered by the increased 1959 Survivor Benefit pursuant to section 21382.4 of the Government Code. This benefit will be payable to family members of an eligible excluded employee who dies on or after January 1, 1985.

NOTE: Authority cited: Section 3539.5, Government Code. Reference: Sections 3539.5 and 21382.4, Government Code.

HISTORY

1. New section filed by the Department of Personnel Administration with the Secretary of State on 10–8–85; effective upon filing. Submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 85, No. 45).
2. Change without regulatory effect amending section heading, text and NOTE, filed 7–21–92; operative 7–21–92 pursuant to title 1, section 100, California Code of Regulations (Register 92, No. 30).

§ 599.930. Time–Off—Precinct Election Board—Excluded Employee.

(a) An excluded employee who is appointed as a member of a Precinct Board, and takes time–off from State employment to serve as a member of that Precinct Board on election day, shall receive his or her regular wage or salary for that election day without forfeiting any compensation received for service as a Precinct Board Member.

(b) Excluded employee is defined in section 599.615(b), except for the purposes of this section, excluded employee shall not include any officer or employee appointed or employed by the Legislature, or any officer, deputy, or employee selected or appointed by an elected State officer.

(c) The eligibility of a State employee to receive time off to serve as a Precinct Board Member is subject to approval by the employee's manager or supervisor. Employees seeking Precinct Election Board release

time shall provide sufficient notice to allow departments to ensure that adequate coverage can be maintained and that operational needs are met.

(d) Verification of service as a Precinct Board Member on election day may be required by the appointing authority by requiring the employee to provide written verification of service from the Registrar of Voters, including the name of the employee serving and the date of the election.

NOTE: Authority cited: Section 3539.5, Government Code. Reference: Section 19844.7, Government Code.

HISTORY

1. New section filed 2-1-2002; operative 2-1-2002. Submitted to OAL for printing only (Register 2002, No. 12).

§ 599.931. Employee Assistance Program—Excluded Employees.

(a) An excluded employee is defined in Section 3527(b) of the Government Code (Ralph C. Dills Act).

(b) The Department will provide for an Employee Assistance Program for excluded employees. The Employee Assistance Program shall be the Department's plan and provide for problem assessment and referral services.

(c) Employee Assistance Program services shall be available to excluded employees and their eligible family members for a period of six months following the employee's actual date of separation from State service due to layoff, provided the number of visits allowed for that year have not been exhausted.

NOTE: Authority cited: Sections 3517.8, 19815.4(d) and 19816, Government Code. Reference: Section 3517.8, Government Code.

HISTORY

1. New section filed by the Department of Personnel Administration with the Secretary of State 3-17-86; effective upon filing. Submitted to OAL for printing only pursuant to Government Code Section 11343.8 (Register 85, No. 45).
2. Amendment of section heading and section filed 2-28-2003; operative 2-28-2003. Submitted to OAL for printing only pursuant to Government Code section 3539.5 (Register 2003, No. 9).

§ 599.933. Items Excluded from Compensation for Retirement Purposes—Excluded Employees.

An excluded employee is defined in section 599.615(b).

(a) Pursuant to section 20022.05 of the Government Code, the Department of Personnel Administration has determined that the following payments and allowances will not be considered compensation for retirement purposes for excluded employees.

(1) Educational differential for excluded employees associated with Bargaining Unit 17.

(2) One time cash-out of eight hours of educational leave for all eligible excluded employees associated with Bargaining Unit 3.

(3) Safety incentive award, cash bonus pilot program, tool allowance, over time meal allowance payments, Class I and Class II driver's license medical examination payments, and health and safety incentive awards for excluded employees associated with Bargaining Unit 12.

(4) Sustained superior accomplishment awards.

(5) Flight pay, physical fitness incentive pay, housing stipends, and relocation incidental expense allocations for excluded employees associated with Bargaining Unit 6.

(6) Physical fitness incentive pay for excluded employees associated with Bargaining Unit 7.

(b) This section shall have an operative date of July 1, 1985. However, industrial disability leave and nonindustrial disability leave claims which are authorized for payment between July 1, 1985 and July 17, 1986, shall not be recalculated. Subsections 2, 3, 4, 5 and 6 shall not be applied to the retirement allowance of any person who retired between July 1, 1985 and July 17, 1986.

NOTE: Authority cited: Section 3539.5 and 20022.05, Government Code. Reference: Sections 3539.5 and 20022.05, Government Code.

HISTORY

1. New section filed by the Department of Personnel Administration with the Secretary of State 9-9-86; effective upon filing pursuant to Government Code section 3539.5. Submitted to OAL for printing only pursuant to Government Code section 11343.8. (Register 86. No. 39.).
2. Change without regulatory effect amending section heading, text, NOTE and HISTORY 1. and redesignating subsections filed 7-21-92; operative 7-21-92 pursuant to title 1, section 100, California Code of Regulations (Register 92, No. 30).
3. Editorial correction of Authority and Reference cites (Register 95, No. 5).

§ 599.934. Holiday in Lieu—Managerial and Supervisory Uniformed Employees, California Highway Patrol.

A managerial employee is defined in section 3513(e) and a supervisory employee is defined in section 3513(g) of the Government Code.

(a) Effective January 1, 1989, managers who are full-time uniformed employees of the California Highway Patrol shall accrue holiday credits in lieu of the following holidays at the rate of eight (8) hours per month: January 1, third Monday in January, February 12, third Monday in February, last Monday in May, July 4, first Monday in September, second Monday in October, November 11, Thanksgiving Day, Day after Thanksgiving, December 25.

(b) Effective July 1, 1989, supervisors who are full-time uniformed employees of the California Highway Patrol shall accrue holiday credits in lieu of the following holidays at the rate of eight (8) hours per month: January 1, third Monday in January, February 12, third Monday in February, last Monday in May, July 4, first Monday in September, second Monday in October, November 11, Thanksgiving Day, Day after Thanksgiving, December 25.

(c) This accrued holiday-in-lieu credit shall be added to the monthly annual leave or vacation accrual rates of uniformed managerial and supervisory employees. In addition to the above, full-time uniformed managerial and supervisory employees of the California Highway Patrol who have completed six (6) months of the initial probationary period shall receive eight (8) hours of annual leave or vacation credit in lieu of personal holiday on July 1 of each fiscal year.

NOTE: Authority cited: Sections 18801.1, 3513(e), 3513(g), 3539.5 and 19815.4(d), Government Code.

HISTORY

1. New section filed by the Department of Personnel Administration with the Secretary of State on 11-10-88; operative 11-10-88. Submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 88, No. 52).
2. Change without regulatory effect amending section heading, text and NOTE and designating subsections (a)-(c) filed 7-21-92; operative 7-21-92 pursuant to title 1, section 100, California Code of Regulations (Register 92, No. 30).

§ 599.935. Wellness Program—Excluded Employees.

Appointing powers are authorized to purchase, for the purpose of supporting wellness programs for excluded employees, wellness related items and/or services including blood pressure monitoring machines, cholesterol screenings, weight scales, wellness newsletters, health risk appraisals, instructional materials, speaker fees, and other related items.

NOTE: Authority cited: Sections 3539.5, 19815.4(a) and 19261, Government Code. Reference: Sections 3539.5 and 19261, Government Code.

HISTORY

1. New section filed by the Department of Personnel Administration with the Secretary of State on 12-1-88; operative 12-1-88. Submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 89, No. 4).
2. Change without regulatory effect amending section heading, text and NOTE filed 7-21-92; operative 7-21-92 pursuant to title 1, section 100, California Code of Regulations (Register 92, No. 30).

§ 599.936. Transit and Vanpool Incentives—Excluded Employees.

(a) This rule applies to excluded employees as defined in section 599.615.1(b).

(b) Excluded employees working in areas served by mass transit, including rail, bus, or other commercial transportation or licensed public conveyance shall be eligible for a 75 percent (75%) discount or reimbursement on monthly public transit passes up to a maximum of $65 per month. This shall not be considered compensation for purposes of retirement contributions.

(c) Excluded employees riding in vanpools shall be eligible for a 75 percent (75%) reimbursement of the monthly rider fee up to a maximum of $65 per month. In lieu of the van pool rider reimbursement, the State

shall provide $100 per month to each excluded employee who is the primary driver of a vanpool and works in a facility served by one or more congested commute routes as identified by the State. This shall not be considered compensation for purposes of retirement contributions.

(d) For the purpose of this rule, a vanpool is defined as a group of seven to fifteen people, including the vanpool driver, who commute together in a vehicle (State or non–State), specifically designed to carry that number of passengers. The passengers may be either State or non–State employees.

(e) Excluded employees headquartered out of State are eligible for transit and vanpool reimbursements described in this rule.

NOTE: Authority cited: Sections 3539.5 and 19815.4(d), Government Code. Reference: Section 3539.5, Government Code.

HISTORY

1. New section filed by Department of Personnel Administration with the Secretary of State on 1–24–89; operative on 1–24–89. Submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 89, No. 10).
2. Change without regulatory effect amending section heading, text and NOTE and redesignating subsections filed 7–21–92; operative 7–21–92 pursuant to title 1, section 100, California Code of Regulations (Register 92, No. 30).
3. Amendment of subsection (a)(1) and repealer and new subsection (a)(2) filed 4–8–93 with Secretary of State by the Department of Personnel Administration; operative 4–8–93. Submitted to OAL for printing only pursuant to Government Code section 3539.5 (Register 93, No. 15).
4. Editorial correction of subsection (b) (Register 95, No. 40).
5. Amendment of subsections (a)(1) and (a)(3) filed 12–21–98; operative 12–21–98. Submitted to OAL for printing only pursuant to Government Code section 3539.5 (Register 98, No. 52).
6. Editorial correction of HISTORY 5 (Register 99, No. 6).
7. Amendment of subsections (a)–(a)(1), repealer of subsection (a)(2) and subsection renumbering filed 10–1–99; operative 10–1–99. Submitted to OAL for printing only pursuant to Government Code section 3539.5 (Register 99, No. 47).
8. Amendment filed 10–31–2001; operative 10–31–2001. Submitted to OAL for printing only pursuant to Government Code section 3539.5 (Register 2001, No. 50).

§ 599.937. Personal Leave Program—Excluded Employees.

(a) This Personal Leave program is being established to achieve savings in excluded and related exempt employee salary costs. Effective July 1, 1992, it shall apply to:

(1) all excluded employees, as defined in Section 3527(b) of the Government Code, except those in temporary employment classifications exempted by the department and those serving under emergency appointments with no right to return to a former position;

(2) all non–civil service (exempt) officers and employees, except those who are in temporary employment positions or whose salary is below the salary previously authorized for their position.

(b) Each full–time employee subject to this program shall be credited with eight (8) hours of personal leave on the first day of the following monthly pay period for each month in the Personal Leave program. The Personal Leave program shall not affect an employee's salary range or rate; however, each full–time employee shall continue to work his/her assigned work schedule and the employee shall have a reduction in pay equal to one day of pay (8 hours) for each monthly pay period the employee is in the Personal Leave program.

(c) Personal leave shall be requested and used by the employee in the same manner as vacation or annual leave. Requests to use personal leave must be submitted in accordance with departmental policies on vacation or annual leave.

(d) At the discretion of the State, all or a portion of unused personal leave credits may be cashed out at the employee's salary rate in effect when such payment is made; this may occur during or after the conclusion of this Personal Leave program. The application of this cash out provision may differ from department to department and from employee to employee. Upon termination from State employment, the employee shall be paid for unused personal leave credits in the same manner as vacation or annual leave. Cash out or lump sum payment for any personal leave credits shall not be considered as "compensation" for purposes of retirement.

(e) An employee may not use any kind of paid leave such as sick leave, vacation, or holiday time to avoid a reduction in pay resulting from the Personal Leave program.

(f) An employee in the Personal Leave program shall be entitled to the same level of State employer contributions for health, vision, dental, flex–elect cash option, and enhanced survivors benefits he or she would have received had the Personal Leave program not occurred.

(g) The Personal Leave program shall not cause a break in State service, or a reduction in the employee's accumulation of service credit for the purposes of seniority and retirement, leave accumulation, and merit salary adjustments.

(h) Reductions in pay resulting from the Personal Leave program shall neither affect the employee's final compensation used in calculating State retirement benefits nor reduce the level of State death or disability benefits the employee would otherwise receive or be entitled to receive nor shall it affect the employee's ability to supplement those benefits with paid leave.

(i) Part–time employees shall be subject to the same conditions as stated above, on a prorated basis regardless of the number of hours in the pay period consistent with the chart below:

Time Base	*Salary Reduction in Hours*	*Personal Leave Credits*
1/10	1	1
1/8	1	1
1/5	2	2
1/4	2	2
3/10	3	3
3/8	3	3
2/5	3	3
1/2	4	4
3/5	5	5
5/8	5	5
7/10	6	6
3/4	6	6
4/5	7	7
7/8	7	7
9/10	8	8

(j) The reduction in pay for permanent intermittent employees shall be prorated based upon the number of hours worked in the monthly pay period as stated in the chart below.

Hours Worked During Pay Period	*Salary Reduction in Hours*	*Personal Leave Credit*
0 – 10.99	0	0
11 – 30.99	1	1
31 – 50.99	2	2
51 – 70.99	3	3
71 – 90.99	4	4
91 – 110.99	5	5
111 – 130.99	6	6
131 – 150.99	7	7
151 or over	8	8

(k) The Personal Leave program shall be administered consistent with the existing payroll system and the policies and practices of the State Controller's office.

(*l*) Employees on Enhanced Industrial Disability Leave, Non–industrial Disability Insurance, Industrial Disability Leave, or Worker's Compensation Temporary Disability for the entire monthly pay period shall be excluded from the Personal Leave program for that month.

(m) Except as provided in (n), employees shall remain in the Personal Leave program until December 31, 1993 or until they have completed 18 months of salary reduction, whichever is sooner. Time during which the employee received a lower salary because of the 1991–92 salary range reduction for managerial and supervisory classifications, as well as time spent in any State personal leave program, shall count toward the 18 months of salary reduction. Personal leave credit for 1991–92 salary reduction time shall be granted to the employee on a month–for–month basis on the date the Personal Leave program becomes applicable to the employee. Employees whose 1991–92 salary rate reduction was less than the 1991–92 salary range reduction shall receive salary reduction and personal leave credit on a prorated basis for any such period.

(n) Regardless of the time limits specified in (m), employees who are designated managerial, except those on the staff of the schools under the jurisdiction of the state Department of Education or the Superintendent of Public Instruction, shall remain in the Personal Leave Program while they are covered by the criteria specified in (a)(2).

NOTE: Authority cited: Section 3539.5, Government Code. Reference: Section 19996.3, Government Code.

HISTORY

1. New section filed 7–16–92 with Secretary of State by Department of Personnel Administration; operative 7–16–92. Submitted to OAL for printing only pursuant to Government Code section 3539.5 (Register 92, No. 29).
2. Amendment of subsections (a) and (m) and new subsection (n) filed 12–29–92 with Secretary of State by the Department of Personnel Administration; operative 12–29–92. Submitted to OAL for printing only pursuant to Government Code section 3539.5 (Register 93, No. 1).
3. Repealer of subsection (a)(3) and amendment of subsections (b) and (n) filed 12–31–93; operative 1–1–94. Submitted to OAL for printing only pursuant to Government Code section 3539.5 (Register 94, No. 5).

§ 599.937.1. Salary Rate Adjustments Related to Personal Leave Program—Excluded Employees.

Effective July 1, 1992, the salary rates for employees in this Personal Leave program shall be determined as if the 1991–92 salary range reductions had not occurred.

NOTE: Authority cited: Section 3539.5, Government Code. Reference: Section 19996.3, Government Code.

HISTORY

1. New section filed 7–16–92 with Secretary of State by Department of Personnel Administration; operative 7–16–92. Submitted to OAL for printing only pursuant to Government Code section 3539.5 (Register 92, No. 29).

§ 599.937.2. Personal Leave Credits—Excluded Employees.

Any excluded employee or related exempt employee who was eligible for the State's 1991–92 exempt employee who was eligible for the State's 1991–92 excluded employee health benefit contribution shall receive an additional 8 hours of personal leave credit, effective July 1, 1992.

NOTE: Authority cited: Section 3539.5, Government Code. Reference: Section 19996.3, Government Code.

HISTORY

1. New section filed 7–16–92 with Secretary of State by Department of Personnel Administration; operative 7–16–92. Submitted to OAL for printing only pursuant to Government Code section 3539.5 (Register 92, No. 29).

§ 599.937.3. Extended Personal Leave — Excluded Employees.

(a) Notwithstanding the time limits described in Section 599.937, upon the determination of the Director, the department may implement a personal leave program. The Director shall determine the duration of each personal leave program.

(b) The definition of excluded employee as described in Section 599.937(a)(1) and (a)(2) shall be the same for each personal leave program.

(c) Each full–time employee identified by the department as eligible shall be required to participate in the program. Each full–time employee shall be credited with eight (8) hours of personal leave on the first day of the following monthly pay period for each month in a personal leave program. Participation in a personal leave program shall not affect an employee's salary range of rate; however, each full–time employee shall continue to work his/her assigned work schedule and the employee shall have a reduction in pay, approximately 5 percent (varies due to rounding purposes), for each pay period the employee is in a personal leave program.

(d) At the discretion of the appointing authority, with approval from the Department of Personnel Administration, all or a portion of unused personal leave credits may be cashed out at the employee's salary rate in effect when such payment is made. This may occur during or after the conclusion of a personal leave program, or upon termination from State employment. The application of this cash out provision may differ from department to department and from employee to employee. Upon termination, the employee shall be paid for unused personal leave credits in the same manner as vacation or annual leave. Cash out or lump sum payment for any personal leave credits shall not be considered as "compensation" for purposes of retirement.

(e) The provisions described in Section 599.937(c), (e), (f), (g), (h), (k), and (*l*) shall apply to excluded employees in a personal leave program.

(f) Part–time employees shall be subject to the same conditions as stated above and will receive credit on a prorated basis regardless of the number of hours in the pay period consistent with the chart below:

Part–Time or Fractional Chart

Time Base	*Personal Leave Credits*
1/10	1
1/8	1
1/5	2
1/4	2
3/10	3
3/8	3
2/5	4
1/2	4
3/5	5
5/8	5
7/10	6
3/4	6
4/5	7
7/8	7
9/10	8

(g) Intermittent or hourly paid employees shall be subject to the same conditions as stated above and will receive credit based upon the number of hours worked in the monthly pay period as stated in the chart below.

Hours Worked During Pay Period	*Personal Leave Credit*
11–30.99	*1*
31–50.99	*2*
51–70.99	*3*
71–90.99	*4*
91–110.99	*5*
111–130.99	*6*
131–150.99	*7*
151 or over	*8*

(h) Employees shall remain in a personal leave program until the Department of Personnel Administration terminates the program. Personal leave credit for the salary reduction shall be granted to the employee on a month–for–month basis on the date a personal leave program becomes applicable to the employee.

NOTE: Authority cited: Section 2539.5, Government Code. Reference: Section 19815(d), Government Code.

HISTORY

1. New section filed 10–1–2003; operative 10–1–2003. Submitted to OAL for printing only (Register 2003, No. 46).

§ 599.939. Overseas Office Directors.

(a) An employee appointed to work in an overseas trade office may be provided benefits equivalent to those of State employees excluded from collective bargaining. Where the laws of the host country require additional or different benefits, those benefits must be provided. However, a benefit not required by the host country does not have to provided if the approximate cost of that benefit is used to offset the cost of providing required benefits. In addition, an employee may choose, instead, to purchase benefits such as health and dental insurance available in the host country and receive reimbursement of the expense not to exceed the current State employer's contribution.

(b) The director of an overseas trade office may:

(1) receive an annual Home Leave benefit consisting of reimbursement for one round trip coach airfare for the employee only in each calendar year;

(2) receive reimbursement for housing and cost–of–living expenses in accordance with the indexes of overseas living expenses used by the U.S. Department for State of federal civilian employees;

(3) receive post hardship differentials in accordance with the U.S. Department of State Indexes of hardship differentials; and

(4) receive an educational allowance for dependent children in accordance with Section 920 of the U.S. Government Standardized Regulations.

NOTE: Authority cited: Section 3539.5, Government Code. Reference: Section 19815.4(d), Government Code.

HISTORY

1. New section filed 11-4-93; operative 11-4-93. Submitted to OAL for printing only pursuant to Government Code section 3539.5 (Register 93, No. 45).
2. Amendment filed 3-27-96; operative 4-1-96 pursuant to Government Code section 11343.4(d). Submitted to OAL for printing only pursuant to Government Code section 3539.5 (Register 96, No. 19).

Article 27. State Deferred Compensation Plan

§ 599.940. An Eligible Plan.

The Director shall adopt and provide for the Administration of the State of California's Deferred Compensation "Plan" as authorized and governed by the Internal Revenue Act, Code Section 457 and the Federal Regulations, Title 26, Chapter I, Subchapter A, Part I (State and Local Government Deferred Compensation Plans). The State Plan shall incorporate and comply with these Federal laws and regulations.

NOTE: Authority cited: Sections 19815.4 and 19993, Government Code. Reference: Sections 19815.2, 19815.4, 19815.6, 19819 and 19993, Government Code; and Section 457, United States Code, Internal Revenue.

HISTORY

1. New Article 27 (Sections 599.940–599.943) filed 1-9-86; effective thirtieth day thereafter (Register 86, No. 2).

§ 599.941. Administrative Costs.

The Director shall determine the cost of Plan administration and shall collect fees as he/she deems equitable in order to assure that the Deferred Compensation Fund does not operate in a deficit. At such time that it is determined that the Deferred Compensation Fund surplus will exceed the amount of one year's program budget as authorized in the Annual Budget Act, the Director shall take action within his/her authority to reduce program revenue. Accounts or wage statements shall specify any amount de-

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ducted by the State or any organization contracting with the State for costs pursuant to this Article.

NOTE: Authority cited: Sections 19815.4 and 19993, Government Code. Reference: Sections 19815.2, 19815.4, 19815.6, 19819 and 19993, Government Code.

§ 599.942. Investments.

The State Deferred Compensation Plan shall consist of the following investment offerings: a savings plan; two annuity products, both fixed and variable; and one mutual fund provider. Nothing herein shall be construed to permit any type of investment prohibited by the State Constitution or to unduly limit the addition of new options.

NOTE: Authority cited: Sections 16431, 19815.4 and 19993, Government Code. Reference: Sections 19815.2, 19815.4, 19815.6, 19819, 19993, 53601 and 53602, Government Code.

§ 599.943. Contract Periods.

Prior to the conclusion of each contract period with investment firms, the Department shall comply with the State's competitive bid process which shall be used to select the firm to be awarded the new contract. Such process shall be undertaken at least every five calendar years.

NOTE: Authority cited: Sections 19815 and 19993, Government Code. Reference: Sections 11010.5, 19815.2, 19815.4, 19815.6, 19819, 19993, 53601 and 53602, Government Code; and Section 10340, Public Contract Code.

Article 27.5. PST Retirement Plan

§ 599.945. Enrollment.

All part–time, seasonal, or temporary (PST) employees who are ineligible for participation in the Public Employees' Retirement System shall be enrolled in the PST Retirement Plan.

In the event a dispute arises over enrollment eligibility, the final determination shall be made by the Director or his/her designee.

HISTORY

1. New article 27.5 (sections 599.945–599.945.3) filed 1–29–93. Submitted to OAL for printing only pursuant to Government Code section 19999.21 (Register 93, No. 5).

§ 599.945.1. Administration.

The Plan is an eligible deferred compensation plan that shall be administered by the Department of Personnel Administration in accordance with the Plan, as amended by the Department from time to time, regulations adopted by the Internal Revenue Service pursuant to the Omnibus Budget Reconciliation Act (OBRA) of 1990 (Internal Revenue Code Section 3121(b)(7)(F), as applicable, and Internal Revenue Code Section 457 and any and all regulations pertaining thereto.

HISTORY

1. New section filed 1–29–93. Submitted to OAL for printing only pursuant to Government Code section 19999.21 (Register 93, No. 5).

§ 599.945.2. Participant Contributions and Benefits.

An employee, subject to the Plan, shall contribute 7.5% of his or her gross pay into an account established for him or her in the Plan. These contributions shall be invested in an investment fund which shall insure preservation of principal. The employee's account shall be the sole source of funding his or her retirement benefits from the Plan.

HISTORY

1. New section filed 1–29–93. Submitted to OAL for printing only pursuant to Government Code section 19999.21 (Register 93, No. 5).

§ 599.945.3. Withdrawal of Funds.

A return of contributions and earnings thereon shall only be permitted upon a separation from State service. The Department shall issue payments at least quarterly.

HISTORY

1. New section filed 1–29–93. Submitted to OAL for printing only pursuant to Government Code section 19999.21 (Register 93, No. 5).

Article 28. Flexible Benefits

§ 599.950. Scope.

As specified in this article, eligible excluded employees may enroll in FlexElect, which is a voluntary cafeteria benefit plan established under Internal Revenue Code Section 125. Benefit options within FlexElect may include but will not necessarily be limited to the following benefits paid for on a pre–tax basis with FlexElect cash option credits and/or pre–tax employee payroll deductions:

(1) Health Care Reimbursement Account

(2) Dependent Care Reimbursement Account

The FlexElect Program shall comply with the Internal Revenue Code as specified in the Department of Personnel Administration's Plan Document filed with the Internal Revenue Service.

NOTE: Authority cited: Sections 3517.8 and 19815.4(d), Government Code. Reference: Section 1156, Government Code.

HISTORY

1. New section filed by the Department of Personnel Administration with the Secretary of State on 10–23–87; operative 10–23–87. Submitted to OAL for printing only pursuant to Government Code Section 11343.8 (Register 87, No. 45).
2. Amendment filed 12–7–98; operative 1–1–99. Submitted to OAL for printing only pursuant to Government Code section 35395 (Register 98, No. 50).

§ 599.951. Enrollment.

(a) The Department shall provide for an annual open enrollment period for eligible employees during the month of September or as otherwise specified by the Director. Enrollment into the program shall become effective on the first day of the following calendar year. The plan year shall begin on January 1 and end December 31 of each calendar year.

(b) Eligible employees must reenroll during the annual open enrollment period of each year to maintain FlexElect benefits.

(c) Elections may not be revoked, rescinded or changed after the last date of the open enrollment period unless the employee has an allowable change in status event as specified by the Internal Revenue Code.

NOTE: Authority cited: Sections 3517.8 and 19815.4(d), Government Code. Reference: Section 1156, Government Code.

HISTORY

1. New section filed by the Department of Personnel Administration with the Secretary of State on 10–23–87; operative 10–23–87. Submitted to OAL for printing only pursuant to Government Code Section 11343.8 (Register 87, No. 45).
2. Amendment filed 12–7–98; operative 1–1–99. Submitted to OAL for printing only pursuant to Government Code section 35395 (Register 98, No. 50).

§ 599.952. Eligibility.

Employees must be designated as an excluded employee to enroll during the annual open enrollment period.

(a) To be eligible for FlexElect, an employee must be working half–time or more and be either:

(1) A permanent civil service employee who is designated managerial, supervisory or confidential for collective bargaining purposes; or,

(2) A permanent civil service or exempt employee who is serving in an agency, or part thereof, in which employees are excluded from collective bargaining by Government Code Section 3513(c); or,

(3) An exempt employee whose assignment has been designated managerial, supervisory or confidential by the department for benefit purposes.

(b) FlexElect participation is limited to employees whose benefits are administered by the Department of Personnel Administration.

(c) Employees who are on an approved leave of absence with return rights to an eligible excluded class will be eligible to enroll and participate in FlexElect during the September enrollment period.

(d) FlexElect participants who change from excluded status to represented status during the plan year will remain in the program for the plan year.

NOTE: Authority cited: Sections 3517.8 and 19815.4(d), Government Code. Reference: Section 1156, Government Code.

HISTORY

1. New section filed by the Department of Personnel Administration with the Secretary of State on 10–23–87; operative 10–23–87. Submitted to OAL for printing only pursuant to Government Code Section 11343.8 (Register 87, No. 45).

2. Amendment filed 12–7–98; operative 1–1–99. Submitted to OAL for printing only pursuant to Government Code section 35395 (Register 98, No. 50).

§ 599.953. Benefits Options and Restrictions.

(a) Health Care Reimbursement Account—employees may elect during the annual open enrollment period, to deposit from a cash payment and/or salary reduction, in an amount from $10 to $416.66 per month into a Health Care Reimbursement Account. The amounts deposited will be used to reimburse employees for qualified medical expenses as defined by the Internal Revenue Code Sections 105 and 213(d). If an employee has a change in status event during the coverage period he/she can start, cease, increase, or decrease contributions to the reimbursement account depending on the change in status event. An employee who ceases to make contributions to the account may continue to submit eligible expenses for reimbursement for the remainder of the coverage period. Employees may submit claims for expenses that have occurred during the plan year through June 30 of the following year.

(b) Dependent Care Reimbursement Account—employees may elect during the annual open enrollment period, to deposit from a cash payment and/or salary reduction, in an amount from $20 to 416.66 per month into a Dependent Care Reimbursement Account. The amounts deposited will be used to reimburse employees for qualified expenses as defined by the Internal Revenue Code sections 21 and 129. If an employee has a change in status event as defined by the IRS during the coverage period, he/she can start, cease, increase, or decrease contributions to the account. An employee who ceases to make contributions to the account may continue to submit eligible expenses for reimbursement for the remainder of the coverage period depending on the change in status event. Employees may submit claims for expenses that have occurred during the plan year through June 30 of the following year.

NOTE: Authority cited: Sections 3517.8 and 19815.4(d), Government Code. Reference: Section 1156, Government Code.

HISTORY

1. New section filed by the Department of Personnel Administration with the Secretary of State on 10–23–87; operative 10–23–87. Submitted to OAL for printing only pursuant to Government Code Section 11343.8 (Register 87, No. 45).
2. Amendment filed 12–7–98; operative 1–1–99. Submitted to OAL for printing only pursuant to Government Code section 35395 (Register 98, No. 50).

§ 599.954. Change in Status Events.

Benefit options may be changed or cancelled during the plan year if a change in status events as defined by IRS regulations occurs. The allowable change in status events include: marriage, divorce, legal separation, or annulment; the birth or adoption of a child; death of a spouse or dependent; or the loss or commencement of the employee's or spouse's employment or loss of employee's or spouse's medical or dental coverage; change in employee's or spouse's work schedule (e.g., NDI, IDL, time base change, commencement or return from an unpaid leave of absence); loss or commencement of dependent's eligibility for medical coverage under the employer's health insurance plan; or change in place of residence or worksite of the employee, spouse, or dependent.

NOTE: Authority cited: Sections 3517.8 and 19815.4(d), Government Code. Reference: Section 1156, Government Code.

HISTORY

1. New section filed by the Department of Personnel Administration with the Secretary of State on 10–23–87; operative 10–23–87. Submitted to OAL for printing only pursuant to Government Code Section 11343.8 (Register 87, No. 45).
2. Amendment filed 12–7–98; operative 1–1–99. Submitted to OAL for printing only pursuant to Government Code section 35395 (Register 98, No. 50).

§ 599.955. Administrative Fee.

A monthly administrative post–tax fee, to be determined by the Director, will be charged during the plan year to each employee who elects to participate in the Program.

NOTE: Authority cited: Sections 3517.8 and 19815.4(d), Government Code. Reference: Section 1156, Government Code.

HISTORY

1. New section filed by the Department of Personnel Administration with the Secretary of State on 10–23–87; operative 10–23–87. Submitted to OAL for printing only pursuant to Government Code Section 11343.8 (Register 87, No. 45).

Article 28.5. Consolidated Benefits Program

§ 599.956. Scope.

As specified in this article, excluded employees are covered by the Consolidated Benefits Program (CoBen) effective January 1, 1999. This is a cafeteria benefit program established under Internal Revenue Code Section 125. Benefit options within CoBen may include but will not necessarily be limited to the following benefits paid for on a pre–tax basis:

(1) Health Insurance

(2) Dental Insurance

(3) Vision Insurance (mandatory coverage)

The CoBen Program shall comply with the Internal Revenue Code as specified in the Department of Personnel Administration's Plan Document filed with the Internal Revenue Service.

HISTORY

1. New article 28.5 (sections 599.956–599.959) and section filed 12–7–98; operative 1–1–99. Submitted to OAL for printing only pursuant to Government Code section 35395 (Register 98, No. 50).

§ 599.957. Eligibility.

Employee eligibility shall be the same as that specified under Section 599.952.

HISTORY

1. New section filed 12–7–98; operative 1–1–99. Submitted to OAL for printing only pursuant to Government Code section 35395 (Register 98, No. 50).

§ 599.958. Benefit Options and Restrictions.

(a) A CoBen allowance will be paid each month to an excluded employee in lieu of separate contributions for health, dental and vision benefits. The department, each year prior to the open enrollment period, will determine the allowance amounts.

(b) If the employee is enrolled in both a health benefit and a dental plan, the health benefit enrollment party code will determine the amount of the contribution.

(c) If the employee elects not to enroll in both a health plan and a dental plan, the employee will receive an amount not to exceed $155 each month in taxable cash for calendar year 1999. In subsequent years, the department, prior to the annual open enrollment period, will fix the amount. Under CoBen, an employee will not be charged a monthly administrative fee for the cash option.

(d) If the employee declines a health benefit plan, the employees' dental benefit enrollment party code will determine the amount of the contribution. An employee must provide proof of coverage of other health insurance through his/her spouse or other present or former employer if health coverage is waived. If the employee elects not to enroll in a health plan but enrolls in a dental plan, the employee will receive the difference between the applicable CoBen allowance and the cost of the dental plan selected and vision benefits, not to exceed $130 per month in taxable cash. Under CoBen, an employee will not be charged a monthly administrative fee for the cash option.

(e) Cash payments resulting from medical and dental benefit elections will be paid to the employee in his/her monthly pay check in the form of additional cash compensation. FlexElect participants electing a Health Care Reimbursement or Dependent Care Reimbursement account will automatically have the cash payment applied to these accounts. If excess dollars remain or the employee does not sign up for a Health Care or Dependent Care Account, the cash payment will automatically be paid as cash. This additional cash compensation is subject to all applicable State and Federal taxes.

(f) An employee who elects dental coverage must maintain State–sponsored dental coverage for three years unless he/she experiences a valid change in status event. Employees who waive dental coverage cannot enroll in a State–sponsored dental plan for a period of three years. Employees must provide proof of other group dental insurance through his/her spouse or other present or former employer if dental coverage is

waived. The employee will not receive a monthly cash payment if he/she waives dental coverage only.

HISTORY

1. New section filed 12–7–98; operative 1–1–99. Submitted to OAL for printing only pursuant to Government Code section 35395 (Register 98, No. 50).

§ 599.959. Changes in Status Events.

Changes in status events shall be governed by Section 599.954.

HISTORY

1. New section filed 12–7–98; operative 1–1–99. Submitted to OAL for printing only pursuant to Government Code section 35395 (Register 98, No. 50).

Article 29. Substance Abuse

§ 599.960. General Policy.

(a) It is the purpose of this article to help ensure that the State workplace is free from the effects of drug and alcohol abuse. These provisions shall be in addition to and shall not be construed as a required prerequisite to or as replacing, limiting or setting standards for any other types of provisions available under law to serve this purpose, including employee assistance, adverse action and medical examination.

(b) Consistent with Government Code Section 19572 and Governor's Executive Order D–58–86, no State employee who is on duty or on standby for duty shall.

(1) Use, possess, or be under the influence of illegal or unauthorized drugs or other illegal mind–altering substances; or

(2) Use or be under the influence of alcohol to any extent that would impede the employee's ability to perform his or her duties safely and effectively.

(c) Employees serving in sensitive positions shall be subject to drug and alcohol testing, hereinafter referred to as substance testing, as provided in this Article when there is reasonable suspicion that the employee has violated subsection (b). In addition, when such an employee has already been found in violation of subsection (b) through the adverse action or medical examination processes under the Civil Service Act (Government Code Section 19253.5; Government Code Sections 19570–19593), as a result of substance testing under this article, or by the employee's own admission, the employee may be required to submit to periodic substance testing as a condition of remaining in or returning to State employment. Unless otherwise provided in the settlement of an adverse action the period for this testing shall not exceed one year.

(d) No employee shall perform duties which, because of drugs taken under a legal prescription, the employee cannot perform without posing a threat to the health or safety of the employee or others. Employees whose job performance is so restricted may be subject to reassignment, medical examination or other actions specified by applicable statutes and regulations.

(e) To protect the public and ensure the safety and security of its correctional institutions, the State must ensure that its peace officers do not use illegal drugs, or misuse prescription drugs, unauthorized or other illegal mind altering substances under any circumstances, and are not under the influence of alcohol while on the job. Consistent with a peace officer's sworn oath to uphold the laws of the State of California, all excluded and exempt State employees who are peace officers under Part 2, Title 3, Chapter 4.5, Section 830.2(d) and Section 830.5 of the Penal Code, will be subject to random drug and alcohol testing pursuant to this article.

(f) For purposes of this Article, an excluded State employee is an employee as defined in Section 3527(b) of the Government Code; an exempt State employee is an officer or employee of the executive branch of government who is not a member of the civil service.

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19820, Government Code. Reference: Section 19261, Government Code.

HISTORY

1. New section filed 9–7–88; operative 10–7–88 (Register 88, No. 38).
2. *New subsections (e) and (f)* filed 1–25–2001; operative 1–25–2001 pursuant to Government Code section 11343.4(c) (Register 2001, No. 4).
3. Amendment of subsection (e) filed 12–21–2005; operative 1–20–2006 (Register 2005, No. 51).

§ 599.961. Sensitive Positions.

(a) For the purposes of this Article, sensitive positions are peace officer positions, as defined by Part 2, Title 3, Chapter 4.5, Section 830.2(d) and Section 830.5 of the Penal Code, and other positions in which drug or alcohol affected performance could clearly endanger the health and safety of others. These other positions have the following general characteristics:

(1) Their duties involve a greater than normal level of trust, responsibility for or impact on the health and safety of others; and

(2) errors in judgment, inattentiveness or diminished coordination, dexterity or composure while performing their duties could clearly result in mistakes that would endanger the health and safety of others; and

(3) employees in these positions work with such independence, or, perform such tasks that it cannot be safely assumed that mistakes such as those described in (2) could be prevented by a supervisor or another employee.

(b) Filled positions shall be identified as sensitive through the following process:

(1) Subject to Department of Personnel Administration approval, each appointing power shall identify the positions under his/her jurisdiction that meet the standards in (a).

(2) The employees serving in the identified positions and, where applicable, their union representatives, shall receive an initial notice that the position has been identified as sensitive and shall be given 30 days to respond.

(3) After considering responses to the initial notice and meeting with employee representatives as required by the Ralph C. Dills Act (Government Code Sections 3512–3524), the Department of Personnel Administration shall issue a final notice to the employees serving in the positions that have been identified as sensitive. This notice shall include a description of the provisions of this article. Existing practices in this area shall not change for any position until 60 days after the final notice concerning it is issued.

(c) Vacant positions shall be identified as sensitive through the procedures specified in (b), including those procedures involving employee organizations, except that the employee notification provisions as stated in (b)(2) and (b)(3) shall not apply.

(d) Once a position has been designated sensitive, the appointing power shall take measures to reasonably and likely ensure that future appointees to it are aware that it is sensitive and are informed of the provisions of this article.

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19820, Government Code. Reference: Section 19261, Government Code.

HISTORY

1. New section filed 9–7–88; operative 10–7–88 (Register 88, No. 38).
2. Amendment of subsection (a) filed 1–25–2001; operative 1–25–2001 pursuant to Government Code section 11343.4(c) (Register 2001, No. 4).
3. Amendment of subsection (a) filed 12–21–2005; operative 1–20–2006 (Register 2005, No. 51).

§ 599.962. Reasonable Suspicion.

(a) Reasonable suspicion is the good faith belief based on specific articulable facts or evidence that an employee may have violated the policy prescribed in section 599.960(b) and that substance testing could reveal evidence related to that violation.

(b) For the purposes of this Article, reasonable suspicion will exist only after the appointing power or his/her designee has considered the facts and/or evidence in the particular case and agrees that they constitute a finding of reasonable suspicion. A designee shall be an individual other than the suspected employee's immediate supervisor and other than the person who made the initial observation leading to the question of reasonable suspicion. The designee shall be a person who is authorized to act for the appointing power in carrying out this Article and who is thoroughly familiar with its provisions and procedures.

(c) After it has been confirmed by the designee the facts and/or evidence upon which the reasonable suspicion is based shall be documented in writing. A copy of this shall be given to the affected employee.

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19820, Government Code. Reference: Section 19261, Government Code.

HISTORY
1. New section filed 9–7–88; operative 10–7–88 (Register 88, No. 38).

§ 599.963. Testing Process and Standards.

Substance testing under this Article shall comply with the following standards and procedures:

(a) The drug testing process shall be one that is scientifically proven to be at least as accurate and valid as urinalysis using an immunoassay screening test, with all positive screening results being confirmed utilizing gas chromatography/mass spectrometry before a sample is considered positive. The alcohol testing process shall be one that is scientifically proven to be at least as accurate and valid as (1) urinalysis using an enzymatic assay screening test, with all positive screening results being confirmed using gas chromatography before a sample is considered positive or (2) breath sample testing using breath alcohol analyzing instruments which meet the State Department of Health Services standards specified in Title 17, Division 1, Chapter 2, Subchapter 1, Group 8, Article 7, Sections 1221.2 and 1221.3 of the California Code of Regulations.

(b) Substances to be tested for shall include the following:
(1) Amphetamines and Methamphetamines
(2) Cocaine
(3) Marijuana/Cannabinoids (THC)
(4) Opiates (narcotics)
(5) Phencyclidine (PCP)
(6) Barbiturates
(7) Benzodiazepines
(8) Methaqualone
(9) Alcohol

In addition, with the approval of the department testing may be conducted for other controlled substances when the appointing power reasonably suspects the use of other substances.

(c) After consulting with expert staff of the laboratory or laboratories selected to perform the testing under this Article, the department shall set test cutoff levels that will identify positive test samples while minimizing false positive test results.

(d) Notwithstanding (c), the Department shall use cutoff levels for substances listed in (b)(1) through (5) as established in SAMHSA, Mandatory Guidelines for Federal Workplace Drug Testing Programs, Subpart B, Section 2.4, Part (e) and Part (f), 59 FR 29916 dated June 9, 1994, and 62 FR 51118 dated September 30, 1997. For alcohol (b)(9) the Department shall use the Federal Motor Carrier Safety Administration alcohol concentration cutoff level as described in Part 382 — Controlled Substances and Alcohol Use and Testing, Section 201, 49 CFR dated July 25, 1995.

(e) Test samples will be collected in a clinical setting such as a laboratory collection station, doctor's office, hospital or clinic or in another setting approved by the department on the basis that it provides for at least an equally secure and professional collection process. The department shall specify procedures to ensure that true samples are obtained.

(f) The Department shall use chain of custody procedures similar to those used by SAMHSA to ensure that a strict chain of custody is maintained for the sample from the time it is taken, through the testing process, to its final disposition. Chain of custody forms shall, at a minimum, include an entry documenting date and purpose each time a specimen or sample is handled or transferred and identifying every individual in the chain of custody.

(g) Drug tests shall be performed by a commercial laboratory that is certified by SAMHSA (pursuant to Mandatory Guidelines for Federal Workplace Drug Testing Program, Federal Register, Vol. 53, No. 69 or which meets the standards used by the College of American Pathologists (CAP) to accredit laboratories for forensic urine drug testing (Standards for Accreditation, Forensic Urine Drug Testing Laboratories, College of American Pathologists).

(h) For random substance testing under this article, the department will use a scientifically valid method such as a random number table or a computer based random number generator that is matched with Social Security numbers, payroll identification numbers, or other comparable identifying numbers. A number not to exceed thirty–five percent of managers, supervisors, and exempt employees who are subject to random substance testing will be randomly selected for substance testing annually.

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19820, Government Code. Reference: Section 19261, Government Code.

HISTORY
1. New section filed 9–7–88; operative 10–7–88 (Register 88, No. 38).
2. Amendment of subsection (a), new subsection (d), subsection relettering, amendment of newly designated subsections (f) and (g), and new subsection (h) filed 1–25–2001; operative 1–25–2001 pursuant to Government Code section 11343.4(c) (Register 2001, No. 4).

§ 599.964. Employee Rights.

(a) Employees subject to random testing shall be noticed at least thirty days prior to implementation of the testing program that they will be subject to random substance testing. The notice shall include information explaining the substance abuse testing procedures to be followed.

(b) Employees suspected of violating the policy prescribed in section 599.960 shall be entitled to representation during any interrogative interviews with the affected employee that could lead to a decision by the appointing power to take adverse action against the employee, regardless of whether these interviews occur before or after the sample is taken. Employees shall also be entitled to representation in any discussions with the Medical Review Officer that occur under section 599.965.

(c) The sample collection process shall include the opportunity for the employee to provide information about factors other than illegal drug use, such as taking legally prescribed medication, that could cause a positive test result. At the employee's option, this information may be submitted in a sealed envelope to be opened only by the Medical Review Officer if the test result is positive.

(d) The employee shall receive a full copy of any test results and related documentation of the testing process.

(e) All confirmed positive samples shall be retained by the testing laboratory in secure frozen storage for one year following the test or until the sample is no longer needed for appeal proceedings or litigation, whichever is longer. At the employee's request and expense the sample may be retested by that laboratory or another laboratory of the employee's choice.

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19820, Government Code. Reference: Section 19261, Government Code.

HISTORY
1. New section filed 9–7–88; operative 10–7–88 (Register 88, No. 38).
2. New subsection (a) and subsection relettering filed 1–25–2001; operative 1–25–2001 pursuant to Government Code section 11343.4(c) (Register 2001, No. 4).

§ 599.965. Medical Review Officer.

Subject to the Department of Personnel Administration approval, each appointing power shall designate one or more Medical Review Officers who shall be licensed physicians who meet federal SAMHSA requirements as described in 59 FR 29908, Mandatory Guidelines For Federal Workplace Drug Testing Programs, Subpart A, Section 1.2 Definitions, dated June 9, 1994 to have the appropriate medical training to interpret and evaluate an individual's confirmed positive test result, to receive test results from the laboratory. Upon receiving results, the Medical Review Officer shall:

(a) Review the results and determine if the standards and procedures required by this Article have been followed.

(b) For positive results interview the affected employee to determine if factors other than illegal drug use may have caused the result.

(c) Consider any assertions by the affected employee of irregularities in the sample collection and testing process.

(d) Based on the above, provide a written explanation of the test results to the appointing power or his/her designee. The employee shall also receive a copy of this explanation.

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19820, Government Code. Reference: Section 19261, Government Code.

HISTORY
1. New section filed 9–7–88; operative 10–7–88 (Register 88, No. 38).
2. Amendment of first paragraph filed 1–25–2001; operative 1–25–2001 pursuant to Government Code section 11343.4(c) (Register 2001, No. 4).

§ 599.966. Records; Confidentiality.

As prescribed by the director, each appointing power shall maintain records of the circumstances and results of any employee testing under this Article. These records, and any other information pertaining to an employee's drug or alcohol test, shall be considered confidential and shall be released only to:

(a) The employee who was tested or other individuals designated in writing by that employee.

(b) The appointing power's Medical Review Officer.

(c) The Department of Personnel Administration as needed for the effective Administration of the Article.

(d) Individuals who need the records or information to:

(1) Properly supervise or assign the employee.

(2) Determine, or assist in determining, what action the appointing power should take in response to the test results.

(3) Respond to appeals or litigation arising from the drug test or related actions.

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19820, Government Code. Reference: Section 19261, Government Code.

HISTORY

1. New section filed 9–7–88; operative 10–7–88 (Register 88, No. 38).

Subchapter 2. Career Executive Assignment Rules

Article 1. Service—General

§ 599.978. Breaks in Service.

The provisions of Section 19998.3 of the Government Code pertaining to breaks in service shall apply to persons serving in career executive assignments.

NOTE: Authority cited: Sections 19815.4(d) and 19816, Government Code. Reference: Section 19889, Government Code.

HISTORY

1. New subchapter 2 (articles 1–4, sections 599.978–599.995, not consecutive) filed 9–6–83; effective thirtieth day thereafter (Register 83, No. 37).

CROSS REFERENCE: See title 2, division 1, chapter 1, subchapter 2, sections 548.61–548.130 not consecutive, sections 548.22–548.25, sections 548.135–548.139, and section 548.145.

2. Change without regulatory effect amending section filed 6–25–92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 26).

§ 599.979. Method of Appraisal.

Performance appraisals of persons serving in career executive assignments shall be conducted in the manner prescribed by the Director of the Department of Personnel Administration.

NOTE: Authority cited: Sections 19815.4(d) and 19816, Government Code. Reference: Section 19889, Government Code.

§ 599.980. Leave of Absence.

Leaves of absence for employees serving in career executive assignments shall be subject to the same provisions of law as those governing other civil service employees.

NOTE: Authority cited: Sections 19815.4(d) and 19816, Government Code. Reference: Section 19889, Government Code.

Article 2. Compensation

§ 599.985. Flexibility in Form of Compensation.

The Department of Personnel Administration shall set salaries within the career executive category in the form of salary ranges, single pay rates, or such other form as may be deemed appropriate. To encourage broader competition for the career executive category, the Department may utilize a salary range of more than five steps for levels within the category. The Department may authorize compensation at a rate beyond the salary range utilized for a level when necessary to meet prevailing practice.

NOTE: Authority cited: Sections 19815.4(d) and 19816, Government Code. Reference: Section 19889, Government Code.

§ 599.986. Rate of Movement upon Promotion to a Career Executive Assignment Position.

A permanent employee who, without a break in service, promotes from a general civil service class or a career executive assignment position to another career executive assignment position with a higher salary range will be entitled to one step and may receive two steps above the rate last received provided that rate does not exceed the maximum rate of the higher salary range unless authorized under Section 599.985.

NOTE: Authority cited: Sections 19815.4(d) and 19816, Government Code. Reference: Section 19889, Government Code.

§ 599.987. Bonus Compensation.

To encourage high performance in career executive assignment positions and to better recognize managerial excellence in the state civil service, the board may establish a "bonus" compensation plan for career executive assignment positions. This system would operate separate and apart from level of salary range, steps or other parts of the salary program and would provide for a lump–sum payment. In such cases, the executive officer will describe guidelines including the amount of bonus possible within a given time period, the standards for eligibility for a bonus, and the procedures for administering such a system.

NOTE: Authority cited: Sections 19815.4(d) and 19816, Government Code. Reference: Section 19889, Government Code.

§ 599.988. Red Circle Rates.

An employee who has ten years of State service, one year of which is under C.E.A. appointment(s) and is terminated from a Career Executive Assignment, shall receive a red circle rate in accordance with standards set by the Department of Personnel Administration unless the termination was voluntary or based on unsatisfactory performance. If the termination was voluntary and performance satisfactory, a red circle is permissive.

The Department may, at the election of the employee, apply the provisions of this section to any employee who, prior to the effective date of this rule, was terminated from a Career Executive Assignment. The salaries of these employees may be adjusted on the effective date of this section for the remainder of the period of time the red circle rate could have been granted.

NOTE: Authority cited: Sections 19815.4(d) and 19816, Government Code. Reference: Sections 19837 and 19889.2, Government Code.

HISTORY

1. Amendment of first paragraph filed 6–5–98; operative 6–5–98. Submitted to OAL for printing only pursuant to Government Code section 3539.5 (Register 98, No. 29).

Article 3. Termination of Assignment

§ 599.990. Notice of Termination.

In terminating a career executive assignment principles of good personnel management shall be observed through conforming to the following procedures:

(a) The appointing power, in advance of service of written notice of termination of assignment, shall indicate to the employee its intention to terminate the assignment and the employee shall be privileged to discuss the termination with the appointing power.

(b) The appointing power shall serve the employee with written notice of termination of the assignment at least 20 days prior to the effective date of termination and a copy of such notice shall be furnished to the Department of Personnel Administration.

NOTE: Authority cited: Sections 19815.4(d) and 19816, Government Code. Reference: Sections 19889 and 19997, Government Code.

§ 599.991. Appeal from Termination.

NOTE: Authority cited: Sections 19815.4(d) and 19816, Government Code. Reference: Sections 19889 and 19997, Government Code.

HISTORY

1. Repealer filed 11–17–87; operative 12–17–87 (Register 87, No. 48).

§ 599.992. Termination upon Request of Employee.

An employee serving in a career executive assignment may request the appointing power to terminate that assignment at any time, and such termination shall be made.

NOTE: Authority cited: Sections 19815.4(d) and 19816, Government Code. Reference: Sections 19889 and 19997, Government Code.

§ 599.993. Reduction in Force.

Whenever it is necessary or advisable to reduce the number of employees in positions where there are general civil service classes and career executive assignments, the appointing power may initiate either or both of the following:

(a) Terminate the assignment of one or more of the career executives as provided for in this Article without regard to the respective seniority of such incumbents as compared to general civil service employees, or

(b) Determine the relative seniority of employees in the general civil service classes. Lay off general civil service employees as provided by Government Code Sections 19997–19997.14 or terminate the career executives as provided for in this Article except that no general civil service employee shall be laid off as long as there is a career executive with less seniority.

NOTE: Authority cited: Sections 19815.4(d) and 19816, Government Code. Reference: Sections 19889 and 19997, Government Code.

§ 599.994. Seniority Credits.

Service in a career executive assignment shall be credited for seniority credits as if the service had been under a general civil service appointment. Credit for service in the career executive assignment category shall be earned as if the entire category were one class; the rate shall be one point per qualifying pay period.

NOTE: Authority cited: Sections 19815.4(d) and 19816, Government Code. Reference: Sections 19889 and 19997, Government Code.

Article 4. Separations from State Service

§ 599.995. Separation of Employee.

A person serving in a career executive assignment may be separated from state service through resignation, automatic resignation, dismissal, retirement, or for medical reasons under the provisions of Government Code Section 19253.5 in the same manner as is provided for other civil service employees. The career executive assignment of a person so separated shall be deemed to have been terminated, and the separation to have been from a position in the class in the general civil service in which the employee had permanent status.

NOTE: Authority cited: Sections 19815.4(d) and 19816, Government Code. Reference: Sections 19253.5, 19889 and 19997, Government Code.

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Title 2. Administration

Division 2. Financial Operations

Chapter 1. Victim Compensation and Government Claims Board

Vol. 2

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Division 2. Financial Operations

(Originally Printed 3–22–45)

Chapter 1. Victim Compensation and Government Claims Board

Article 1. General Provisions

§ 600. Statutory Authority.

NOTE: Authority cited for Chapter 1: Sections 13920 and 13921, Government Code, unless otherwise noted.

HISTORY

1. Amendment filed 9–13–57 as procedural; designated effective 10–1–57 (Register 57, No. 15).
2. Amendment of quoted Section 13920(a) filed 2–25–77; effective thirtieth day thereafter (Register 77, No. 9).
3. Change without regulatory effect repealing section filed 9–28–87; operative 10–28–87 (Register 87, No. 41).
4. Amendment of chapter 1 heading from the State Board of Control to the Victim Compensation and Government Claims Board filed 3–23–2004; operative 3–23–2004 (Register 2004, No. 13).

§ 601. Date Effective.

The State Board of Control has adopted the following rules and regulations effective October 1, 1957. These rules and regulations repeal all other previous rules and regulations hitherto in effect.

HISTORY

1. Amendment filed 1–6–56 as an emergency; effective upon filing (Register 56, No. 1).
2. Amendment filed 9–13–57 as procedural; designated effective 10–1–57 (Register 57, No. 15).

§ 602. Department Rules.

Nothing contained in the rules hereby fixed shall be construed to prohibit a state department or agency adopting rules governing its own employees or agents; provided, such rules do not conflict with these rules and regulations.

HISTORY

1. Amendment filed 5–19–67; designated effective 7–1–67 (Register 67, No. 20).

Article 1.1. State Board of Control—Conflict of Interest Code

NOTE: It having been found, pursuant to Government Code Section 11409(a), that the printing of the regulations constituting the Conflict of Interest Code is impractical, and these regulations being of limited and particular application, these regulations are not published in full in the California Code of Regulations. The regulations are available to the public for review or purchase at cost at the following locations:

STATE BOARD OF CONTROL
926 J STREET, SUITE 300
SACRAMENTO, CA 95814

FAIR POLITICAL PRACTICES COMMISSION
428 J STREET, SUITE 800
SACRAMENTO, CA 95814

ARCHIVES
SECRETARY OF STATE
1020 O STREET
SACRAMENTO, CA 95814

The Conflict of Interest Code is designated as Article 1.1, Chapter 1, Division 2 of Title 2 of the California Code of Regulations and consists of sections numbered and titled as follows:

Article 1.1. Conflict of Interest Code

Section
604. General Provisions
Appendix

NOTE: Authority cited: Sections 87300 and 87304, Government Code. Reference: Section 87300, et seq., Government Code.

HISTORY

1. New Article 1.1 (Sections 604–609 and Appendixes A and B) filed 9–29–77; effective thirtieth day thereafter. Approved by Fair Political Practices Commission 7–6–77 (Register 77, No. 40).
2. Repealer of Article 1.1 (Sections 604–609 and Appendices A and B) and new Article 1.1 (Section 604 and Appendix) filed 2–26–81; effective thirtieth day thereafter. Approved by Fair Political Practices Commission 12–1–80 (Register 81, No. 9).
3. Editorial correction of address for the Fair Political Practices Commission (Register 96, No. 31).
4. Amendment of section and Appendix filed 7–29–96; operative 8–28–96. Approved by Fair Political Practices Commission 6–20–96 (Register 96, No. 31).

Article 2. Appropriations

§ 610. Fiscal Year.

(a) The State's fiscal year is from July 1st to and including June 30th of the following year.

(b) "Agreement or order" as used in this section means an agreement, contract, printing estimate, purchase order, subpurchase order, or Office of Procurement—Central Stores supply order.

(c) The date of an agreement or order for services, materials, supplies or equipment, determines the fiscal year appropriation for support or other current expenses, to which the expenditure shall be charged, except that:

(1) Expenditures pursuant to an agreement or order which stipulates that services or delivery be delayed until requested or until on or after a stated date in a subsequent fiscal year shall be charged to the fiscal year in which the services, materials, supplies or equipment are received. (However, the absence of a delivery date, or the specifying of a calendar date without qualifying instructions requesting delay in delivery, or the specifying of a delivery date as 10 days, 30 days, or the like, shall be construed to read "delivery as soon as possible," and expenditures shall be charged to the fiscal year in which the agreement or order was issued.)

(2) Expenditures pursuant to an agreement or order which is not an order on a definite supplier for a definite object or quantity of definite objects shall be charged to the fiscal year in which the services, materials, supplies or equipment were received.

Invoices pursuant to an agreement or order included in claims filed after the end of the fiscal year in which the agreement or order was issued shall be marked to show the date of receipt of the services, materials, supplies or equipment.

This section shall not be interpreted to require the issuance of a new agreement or order to cover items which, because of this section, are chargeable to a fiscal year subsequent to that in which the agreement or order was issued.

(d) A capital outlay appropriation for construction, improvements, repairs or equipment, when the Architecture Revolving Fund is not used, is encumbered on the date of and to the extent of the agreement or order.

(e) Materials, supplies or equipment purchased and received in the months of May or June for use during the subsequent fiscal year may be paid for from the appropriation for such subsequent fiscal year. Invoices covering such purchases shall be marked as follows: Purchased in _____ F.Y. for use in _____ F.Y.

NOTE: Authority cited: Section 13920, Government Code.

HISTORY

1. Amendment filed 10–17–63 as procedural and organizational; effective upon filing (Register 63, No. 18). For prior history, see Register 61, No. 10.
2. Amendment of subsections (a), (b) and (d) and new NOTE filed 2–25–77; effective thirtieth day thereafter (Register 77, No. 9).
3. Editorial correction of Authority cite (Register 95, No. 6).

§ 611. Availability of Appropriations.

(See Section 16304, Government Code).

HISTORY

1. Originally published 3–22–45 (Title 2).
2. Amendment filed 12–15–47 as an emergency (Register 10, No. 7).

§ 612. Reversion of Appropriation.

(See Section 16304, Government Code).

HISTORY

1. Originally published 3–22–45 (Title 2).
2. Amendment filed 12–15–47 as an emergency (Register 10, No. 7).

§ 613. Purpose of Appropriations.

Appropriations are not interchangeable, and each shall be used only for the particular purpose defined in the act making the appropriation.

§ 614. Indebtedness in Excess of Appropriation.

No indebtedness can be created by any state officer or employee unless the written consent of the Department of Finance has first been obtained.

NOTE: Authority cited: Section 11006, Government Code.

HISTORY

1. Amendment and new NOTE filed 2–25–77; effective thirtieth day thereafter (Register 77, No. 9).

Article 2.5. General Hearing Procedures

Subarticle 1. General Provisions

§ 615.1. Applicable Law.

(a) The formal hearing provisions of the Administrative Procedure Act (Gov. Code, §§ 11500–11529) do not apply.

(b) The alternative dispute procedures of the Administrative Procedure Act (Gov. Code, §§ 11420.10–11420.30) do not apply.

(c) The declaratory decision provisions of the Administrative Procedure Act (Gov. Code, §§ 11465.10–11465.70) do not apply.

NOTE: Authority cited: Sections 11400.20, 13920, 13968(a)(a) and 13974, Government Code; and Section 4906, Penal Code. Reference: Sections 11420.10(c), 11425.10(a)(2) and 11465.70(c), Government Code.

HISTORY

1. New article 2.5 (sections 615.1–619.7), subarticle 1 (sections 615.1–615.2) and section filed 10–8–97 as an interim regulation pursuant to Government Code section 11400.20; operative 10–8–97 (Register 97, No. 41). Interim regulations expire on 12–31–98 unless earlier amended or repealed.
2. Interim regulation transmitted to OAL 12–31–98 as permanent rulemaking with amendments and filed 2–17–99; operative 2–17–99 pursuant to Government Code section 11400.20 (Register 99, No. 8).
3. Editorial correction repealing erroneous HISTORY 2 and renumbering and amending former HISTORY 3 to HISTORY 2 (Register 99, No. 12).

§ 615.2. Definitions.

(a) As used in this article:

(1) "Applicant" means a person submitting an application as defined in subsection (a)(2);

(2) "Application" means the following:

(A) an application for assistance or a supplemental claim in the Victims of Crime program under Government Code sections 13959–13969.4;

(B) a claim for indemnification by persons benefiting the public under Government Code sections 13970–13974.1; or

(C) a claim for compensation for erroneously–convicted felons under Penal Code sections 4900–4906.

(3) "Bid protest" means a challenge to an award of a contract under Public Contract Code section 10306 or 12102, subdivision (h).

(4) "Hearing" means an evidentiary proceeding for the determination of facts upon which the board makes its decision;

(5) "Hearing officer" means a person appointed by the Executive Officer under section 615.10 to preside at a hearing;

(6) "Informal hearing" means an informal proceeding in the nature of a conference during which the parties have an opportunity to be heard. The following are informal hearings:

(A) any hearing over which the board presides;

(B) any hearing limited to submission of written materials; and

(C) any hearing in which cross examination is not permitted;

(7) "May" means the action or conduct is permissive;

(8) "Mail delivery service" means a mail delivery company or organization other than the United States Postal Service;

(9) "Party" means a person or entity permitted by the board's regulations to participate in a hearing; and

(10) "Shall" means the action or conduct is mandatory.

NOTE: Authority cited: Sections 11400.20, 13920, 13968(a) and 13974, Government Code; and Section 4906, Penal Code. Reference: Sections 11405.20, 11445.10(b)(2), 13968(a) and 13974, Government Code; and Section 4906, Penal Code.

HISTORY

1. New section filed 10–8–97 as an interim regulation pursuant to Government Code section 11400.20; operative 10–8–97 (Register 97, No. 41). Interim regulations expire on 12–31–98 unless earlier amended or repealed.
2. Interim regulation transmitted to OAL 12–31–98 as permanent rulemaking with amendments and filed 2–17–99; operative 2–17–99 pursuant to Government Code section 11400.20 (Register 99, No. 8).
3. Editorial correction repealing erroneous HISTORY 2 and renumbering and amending former HISTORY 3 to HISTORY 2 (Register 99, No. 12).

Subarticle 2. Assignment to Board or Hearing Officer

§ 615.10. Assignment of Hearing.

(a) The Executive Officer may refer a hearing to:

(1) the board; or

(2) a hearing officer.

(b) A hearing officer may be:

(1) a board member;

(2) an employee of the board;

(3) an Administrative Law Judge of the Office of Administrative Hearings; or

(4) any person appointed by the board.

NOTE: Authority cited: Sections 11400.20, 13920, 13968(a) and 13974, Government Code; and Section 4906, Penal Code. Reference: Sections 13907, 13908 and 13963, Government Code.

HISTORY

1. New subarticle 2 (sections 615.10–615.12) and section filed 10–8–97 as an interim regulation pursuant to Government Code section 11400.20; operative 10–8–97 (Register 97, No. 41). Interim regulations expire on 12–31–98 unless earlier amended or repealed.
2. Interim regulation transmitted to OAL 12–31–98 as permanent rulemaking with amendments and filed 2–17–99; operative 2–17–99 pursuant to Government Code section 11400.20 (Register 99, No. 8).
3. Editorial correction repealing erroneous HISTORY 2 and renumbering and amending former HISTORY 3 to HISTORY 2 (Register 99, No. 12).

§ 615.11. Separation of Functions.

(a) A board member or hearing officer may not preside at a hearing if the board member or hearing officer:

(1) has functioned as an investigator or advocate concerning the application or bid protest that is the subject of the hearing; or

(2) is directly supervised by a person who has functioned as an investigator or advocate concerning the application or bid protest that is the subject of the hearing.

(b) A board member or hearing officer has functioned as an investigator or advocate concerning an application or bid protest if the person personally performed and was substantially involved with an application or bid protest, including:

(1) personally gathered facts or information upon which a staff recommendation was made about the final disposition of the application or bid protest; or

(2) personally participated in the development of a staff recommendation about the final disposition of the application or bid protest.

(c) A board member or hearing officer is directly supervised by a person who has functioned as an investigator or advocate concerning an application or bid protest if the work of the board member or hearing officer was assigned, evaluated, and directed, on a regular basis, by a person who engaged in the conduct listed in subdivision (b) of this section.

(d) A person is not substantially involved with an application or bid protest if the person:

(1) engaged in the conduct listed in subdivision (b) of this section only to a marginal or trivial extent; or

(2) has not developed a commitment to a particular outcome concerning the application or bid protest.

NOTE: Authority cited: Sections 11400.20, 13920, 13968(a) and 13974, Government Code; and Section 4906, Penal Code. Reference: Sections 11425.10(a)(4) and 11425.30, Government Code.

HISTORY

1. New section filed 10–8–97 as an interim regulation pursuant to Government Code section 11400.20; operative 10–8–97 (Register 97, No. 41). Interim regulations expire on 12–31–98 unless earlier amended or repealed.
2. Interim regulation transmitted to OAL 12–31–98 as permanent rulemaking with amendments and filed 2–17–99; operative 2–17–99 pursuant to Government Code section 11400.20 (Register 99, No. 8).
3. Editorial correction repealing erroneous HISTORY 2 and renumbering and amending former HISTORY 3 to HISTORY 2 (Register 99, No. 12).

§ 615.12. Disqualification of Board Member or Hearing Officer.

(a) A board member or hearing officer shall disqualify himself or herself and withdraw from participating in any hearing if he or she:

(1) cannot provide a fair and impartial hearing;

(2) has bias;

(3) has prejudice; or

(4) has a personal or financial interest in the outcome of the hearing.

(b) A board member or hearing officer, who receives a communication in violation of section 618.1 may disqualify himself or herself from participating in the hearing.

(c) The parties may waive a disqualification of a board member or hearing officer in writing or on the record at the hearing.

(1) If the parties sign a written waiver of disqualification, it shall be included in the hearing record.

(d) A party may request the disqualification of a board member or hearing officer from participating in a hearing for any of the reasons listed in subdivisions (a) and (b) of this section.

(e) A request to disqualify a board member or hearing officer must:

(1) be filed prior to the taking of any evidence at a hearing; and

(2) include a declaration under penalty of perjury stating specific facts to prove that a basis to disqualify the person exists under subdivisions (a) or (b) of this section.

(f) When the board is conducting the hearing, the other board members or designees who are not being challenged shall determine if the request to disqualify shall be granted or denied.

(g) When a hearing officer is conducting the hearing, the hearing officer shall determine whether the request to disqualify shall be granted or denied.

(h) Notwithstanding subsections (f) and (g), the board or hearing officer may refer the request to disqualify to the Executive Officer for determination.

(i) Unless there is additional evidence of bias, prejudice or interest in the outcome of the hearing, it shall not be grounds for disqualification that the board member or hearing officer:

(1) is or is not a member of a racial, ethnic, religious, sexual, or similar group whose rights are involved in the hearing;

(2) has experience, technical competence, or specialized knowledge of, or has in any capacity expressed a view on, a legal, factual, or policy issue presented in the hearing; or

(3) has as a lawyer or public official participated in the drafting of laws or regulations, or attempted to pass or defeat laws or regulations that are to be applied, interpreted or implemented in the hearing.

(j) If a board member or hearing officer is disqualified for the reason stated in subsection (b), the disqualified board member or hearing officer may order that the part of the hearing record concerning the ex parte communication shall be sealed by a protective order.

(1) The sealed portion of the hearing record shall not be considered when deciding the matters at issue in the hearing.

(2) The sealed portion of the hearing record is part of the record for the purposes of subsequent judicial review.

NOTE: Authority cited: Sections 11400.20, 13920, 13968(a) and 13974, Government Code; and Section 4906, Penal Code. Reference: Sections 11425.10(a)(5), 11425.40 and 11430.60, Government Code.

HISTORY

1. New section filed 10–8–97 as an interim regulation pursuant to Government Code section 11400.20; operative 10–8–97 (Register 97, No. 41). Interim regulations expire on 12–31–98 unless earlier amended or repealed.
2. Interim regulation transmitted to OAL 12–31–98 as permanent rulemaking with amendments and filed 2–17–99; operative 2–17–99 pursuant to Government Code section 11400.20 (Register 99, No. 8).
3. Editorial correction repealing erroneous HISTORY 2 and renumbering and amending former HISTORY 3 to HISTORY 2 (Register 99, No. 12).

Subarticle 3. Pre–Hearing Procedure

§ 616.1. Copy of Hearing Procedure.

A copy of the hearing procedures shall be provided at reasonable cost upon request.

NOTE: Authority cited: Sections 11400.20, 13920, 13968(a) and 13974, Government Code; and Section 4906, Penal Code. Reference: Section 11425.10(a)(2), Government Code.

HISTORY

1. New subarticle 3 (sections 616.1–616.4) and section filed 10–8–97 as an interim regulation pursuant to Government Code section 11400.20; operative 10–8–97 (Register 97, No. 41). Interim regulations expire on 12–31–98 unless earlier amended or repealed.
2. Interim regulation transmitted to OAL 12–31–98 as permanent rulemaking with amendments and filed 2–17–99; operative 2–17–99 pursuant to Government Code section 11400.20 (Register 99, No. 8).
3. Editorial correction repealing erroneous HISTORY 2 and renumbering and amending former HISTORY 3 to HISTORY 2 (Register 99, No. 12).

§ 616.2. Duty to Furnish Correct Address.

(a) A party shall inform the board and all other known parties of the party's correct address.

(b) A representative of a party shall inform the board and all other known parties of the representative's correct address.

(c) A party or representative of a party shall promptly inform the board and all other known parties of any change of address of the party or representative.

NOTE: Authority cited: Sections 11400.20, 11440.20(a), 13920, 13968(a) and 13974, Government Code; and Section 4906, Penal Code. Reference: Sections 13963 and 13973, Government Code; Section 4902, Penal Code; and Sections 10306 and 12102(h), Public Contract Code.

HISTORY

1. New section filed 10–8–97 as an interim regulation pursuant to Government Code section 11400.20; operative 10–8–97 (Register 97, No. 41). Interim regulations expire on 12–31–98 unless earlier amended or repealed.
2. Interim regulation transmitted to OAL 12–31–98 as permanent rulemaking with amendments and filed 2–17–99; operative 2–17–99 pursuant to Government Code section 11400.20 (Register 99, No. 8).
3. Editorial correction repealing erroneous HISTORY 2 and renumbering and amending former HISTORY 3 to HISTORY 2 (Register 99, No. 12).

§ 616.3. Manner of Service of Notice or Documents.

(a) A written notice or document required to be given shall be delivered personally, by mail, or by facsimile transmission to a party or representative at the address provided by the party or representative under section 616.2.

(1) Documents that exceed ten pages, including attachments, shall not be served upon or filed with the board or hearing officer by facsimile transmission.

(b) Delivery by mail may include:

(1) first–class mail via the United States Postal Service;

(2) registered mai via the United States Postal Service;

(3) certified mail via the United States Postal Service; and

(4) mail delivery service.

(c) A notice or document delivered personally shall be considered filed, served and received on the date of delivery.

(d) A notice or document delivered by mail shall be considered filed or served on the mailing date if:

(1) the postage was prepaid; and

(2) the envelope containing the notice or document was addressed correctly.

(e) The mailing date shall be presumed to be the date of the postmark or the date the envelope containing the notice or document was accepted by a mail delivery service if the mailing complied with subsection (d)(1) and (2).

(f) A notice or document delivered by mail shall be presumed to be received five days after the mailing date if the mailing complied with subsection (d)(1) and (2).

(g) A notice or document delivered by facsimile shall be presumed to be filed, served and received upon completion of the facsimile transmission.

(1) Documents for which the facsimile transmission is not completed before 5:00 p.m. shall be presumed to be filed, served and received at 8:00 a.m. the next day.

(h) The party serving or filing the notice or document has the burden of proving that the party complied with this section.

NOTE: Authority cited: Sections 11400.20, 13920, 13968(a) and 13974, Government Code; and Section 4906, Penal Code. Reference: Sections 11440.20, 13963 and 13973, Government Code; and Sections 10306 and 12102(h), Public Contract Code.

HISTORY

1. New section filed 10–8–97 as an interim regulation pursuant to Government Code section 11400.20; operative 10–8–97 (Register 97, No. 41). Interim regulations expire on 12–31–98 unless earlier amended or repealed.
2. Interim regulation transmitted to OAL 12–31–98 as permanent rulemaking with amendments and filed 2–17–99; operative 2–17–99 pursuant to Government Code section 11400.20 (Register 99, No. 8).
3. Editorial correction repealing erroneous HISTORY 2 and renumbering and amending former HISTORY 3 to HISTORY 2 (Register 99, No. 12).

§ 616.4. Notice of Hearing.

(a) The Executive Officer shall send a notice to each party of the following:

(1) the date, time and location of the hearing;

(2) notice that the informal hearing procedures will be used, if applicable; and

(3) information about requesting a copy of the hearing procedures under section 616.1.

(b) A notice of hearing shall be sent at least ten days before the start of the hearing.

NOTE: Authority cited: Sections 11400.2, 13920, 13968(a) and 13974, Government Code; and Section 4906, Penal Code. Reference: Sections 11445.30(a), 13963(b) and 13973, Government Code; Section 4902, Penal Code; and Sections 10306 and 12102(h), Public Contract Code.

HISTORY

1. New section filed 10–8–97 as an interim regulation pursuant to Government Code section 11400.20; operative 10–8–97 (Register 97, No. 41). Interim regulations expire on 12–31–98 unless earlier amended or repealed.
2. Interim regulation transmitted to OAL 12–31–98 as permanent rulemaking with amendments and filed 2–17–99; operative 2–17–99 pursuant to Government Code section 11400.20 (Register 99, No. 8).
3. Editorial correction repealing erroneous HISTORY 2 and renumbering and amending former HISTORY 3 to HISTORY 2 (Register 99, No. 12).

Subarticle 4. Hearing Procedure

§ 617.1. Public Hearing.

(a) Hearings shall be open to public observation, unless otherwise provided by law.

(b) A hearing conducted by telephone, television, or other electronic means as provided in section 617.4 complies with subdivision (a) of this section if:

(1) members of the public may be physically present at the location where the board or hearing officer is conducting the hearing; and

(2) members of the public may inspect the hearing record and inspect any transcript obtained by the board or hearing officer.

(A) A request to inspect the hearing record or any transcript obtained by the board or hearing officer shall be in writing and is governed by the provisions of the Public Records Act, Government Code sections 6250–6270.

(B) The hearing record and any transcript obtained by the board or hearing officer shall be available for public inspection during regular business hours at the headquarters of the board.

(c) This section shall not apply to any prehearing conference or settlement conference.

NOTE: Authority cited: Sections 11400.20, 13920, 13968(a) and 13974, Government Code; and Section 4906, Penal Code. Reference: Sections 11425.10(a)(3) and 11425.20, Government Code.

HISTORY

1. New subarticle 4 (sections 617.1–617.9) and section filed 10–8–97 as an interim regulation pursuant to Government Code section 11400.20; operative 10–8–97 (Register 97, No. 41). Interim regulations expire on 12–31–98 unless earlier amended or repealed.
2. Interim regulation transmitted to OAL 12–31–98 as permanent rulemaking with amendments and filed 2–17–99; operative 2–17–99 pursuant to Government Code section 11400.20 (Register 99, No. 8).
3. Editorial correction repealing erroneous HISTORY 2 and renumbering and amending former HISTORY 3 to HISTORY 2 (Register 99, No. 12).

§ 617.2. Powers and Duties of Board or Hearing Officer.

(a) The board or hearing officer shall have the following powers and duties:

(1) the power to regulate the course of the hearing, including the power to permit or limit:

(A) opening statements;

(B) re–direct examination;

(C) re–cross examination;

(D) presentation of rebuttal witnesses;

(E) allocation of time for each party to present its case, including the time allowed for cross examination of witnesses;

(F) oral or written closing arguments; and

(G) opening or closing briefs.

(2) the power to regulate the conduct of the parties and their representatives;

(3) the power to administer oaths and affirmations;

(4) the power to examine witnesses;

(5) the power to rule on evidentiary and procedural motions;

(6) the duty to conduct a fair and impartial hearing;

(7) the duty to maintain order;

(8) the duty to avoid unnecessary delay; and

(9) all powers and duties reasonably necessary to perform the functions contained in subsections (1) through (8).

(b) The board or hearing officer shall control the taking of evidence in any manner suited to learning the relevant facts and safeguarding the rights of the parties, including the limitation or exclusion of:

(1) repetitious evidence;

(2) irrelevant evidence;

(3) evidence that is tangential to the issues to be determined;

(4) evidence that is of limited probative value; or

(5) evidence that is unreliable.

NOTE: Authority cited: Sections 11400.20, 13920, 13968(a) and 13974, Government Code; and Section 4906, Penal Code. Reference: Sections 11425.10(a)(1), 13910, 13911, 13963 and 13973, Government Code; Section 4903, Penal Code; and Sections 10306 and 12102(h), Public Contract Code.

HISTORY

1. New section filed 10–8–97 as an interim regulation pursuant to Government Code section 11400.20; operative 10–8–97 (Register 97, No. 41). Interim regulations expire on 12–31–98 unless earlier amended or repealed.
2. Interim regulation transmitted to OAL 12–31–98 as permanent rulemaking with amendments and filed 2–17–99; operative 2–17–99 pursuant to Government Code section 11400.20 (Register 99, No. 8).
3. Editorial correction repealing erroneous HISTORY 2 and renumbering and amending former HISTORY 3 to HISTORY 2 (Register 99, No. 12).

§ 617.3. Representation of Parties.

(a) A party may represent himself or herself, or be represented by an attorney or other person.

(b) Notwithstanding subsection (a), the board or hearing officer may refuse to allow any person to represent a party in any hearing if the person at any hearing before the board or hearing officer:

(1) engaged in unethical, disruptive or contemptuous conduct;

(2) intentionally failed to comply with the proper instructions or orders of the board or hearing officer; or

(3) engaged in conduct that provides a basis for contempt under section 618.3 or sanctions under section 618.4.

NOTE: Authority cited: Sections 11400.20, 13920, 13968(a) and 13974, Government Code; and Section 4906, Penal Code. Reference: Sections 13963 and 13973, Government Code; Section 4903, Penal Code; and Sections 10306 and 12102(h), Public Contract Code.

HISTORY

1. New section filed 10–8–97 as an interim regulation pursuant to Government Code section 11400.20; operative 10–8–97 (Register 97, No. 41). Interim regulations expire on 12–31–98 unless earlier amended or repealed.
2. Interim regulation transmitted to OAL 12–31–98 as permanent rulemaking with amendments and filed 2–17–99; operative 2–17–99 pursuant to Government Code section 11400.20 (Register 99, No. 8).
3. Editorial correction repealing erroneous HISTORY 2 and renumbering and amending former HISTORY 3 to HISTORY 2 (Register 99, No. 12).

§ 617.4. Hearing by Electronic Means.

(a) The board or hearing officer may conduct all or part of a hearing by telephone, television, or other simultaneous electronic means if each participant:

(1) has an opportunity to participate;

(2) can hear the entire hearing while it is taking place; and

(3) may observe exhibits.

(A) This requirement shall be satisfied if each participant has an opportunity prior to the hearing to see each exhibit to be used during a hearing conducted by electronic means.

(b) For purposes of this section, a participant in a hearing includes:

(1) a party;

(2) a party's representative; and

(3) a witness whose testimony will be provided by telephone, television, or other electronic means.

(c) No part of a hearing shall be conducted by telephone, television or other electronic means if a party objects to it.

(d) The party that requested that all or part of a hearing be conducted by electronic means may be responsible for providing, operating, and paying for all equipment needed to comply with subdivision (a).

(1) The party shall consult with the board, hearing officer, or Executive Officer to arrange for the equipment to be set up and operated.

NOTE: Authority cited: Sections 11400.20, 13920, 13968(a) and 13974, Government Code; and Section 4906, Penal Code. Reference: Section 11440.30, Government Code.

HISTORY

1. New section filed 10–8–97 as an interim regulation pursuant to Government Code section 11400.20; operative 10–8–97 (Register 97, No. 41). Interim regulations expire on 12–31–98 unless earlier amended or repealed.
2. Interim regulation transmitted to OAL 12–31–98 as permanent rulemaking with amendments and filed 2–17–99; operative 2–17–99 pursuant to Government Code section 11400.20 (Register 99, No. 8).
3. Editorial correction repealing erroneous HISTORY 2 and renumbering and amending former HISTORY 3 to HISTORY 2 (Register 99, No. 12).

§ 617.5. Informal Hearing.

(a) A party may object to having an informal hearing in writing within five days of receiving the hearing notice.

(b) The Executive Officer or hearing officer shall rule on an objection to an informal hearing before evidence is taken at a hearing.

(c) An objection to an informal hearing shall include:

(1) the specific facts and law upon which the objection is based; and

(2) specific facts and law relevant to the factors contained in subsection (f).

(d) An objection to an informal hearing that is limited to written materials shall include the following, to the extent relevant to the basis for the objection, or as required by the Executive Officer or hearing officer:

(1) the identity of the witnesses that the party wishes to present;

(2) a summary of the testimony that is anticipated from each witness; and

(3) the issues to which each witness will testify.

(e) An objection to an informal hearing that requests an opportunity to cross examine witnesses shall identify:

(1) the witnesses that the party wishes to cross examine; and

(2) the issues that the party wishes to explore during cross examination of each witness.

(f) If confidential facts or sources are relevant to the information required under subsections (d) or (e), a party shall:

(1) state that confidential facts or sources are involved; and

(2) provide information that can be given without disclosing the confidential facts or sources.

(g) The Executive Officer or hearing officer shall consider the following factors when ruling on an objection to an informal hearing:

(1) complexity of legal or factual issues;

(2) necessity to evaluate credibility of witnesses for a proper determination of issues;

(3) parties' representation by legal counsel;

(4) necessity of witnesses being subject to cross examination for the proper determination of issues; and

(5) any other factor likely to affect a just and proper determination of issues.

(h) If the objection to an informal hearing is sustained, the Executive Officer or hearing officer may permit:

(1) testimony from parties;

(2) testimony from witnesses who are not parties; or

(3) cross examination of witnesses.

(i) If the Executive Officer sustains an objection to an informal hearing over which the board was to preside, the Executive Officer shall assign the hearing to a hearing officer.

NOTE: Authority cited: Sections 11400.20, 13920, 13968(a) and 13974, Government Code; and Section 4906, Penal Code. Reference: Sections 11445.20(c), 11445.30, 11445.40, 11445.50, 11445.60 and 11470.10, Government Code; and Sections 10306 and 12102(h), Public Contract Code.

HISTORY

1. New section filed 10–8–97 as an interim regulation pursuant to Government Code section 11400.20; operative 10–8–97 (Register 97, No. 41). Interim regulations expire on 12–31–98 unless earlier amended or repealed.
2. Interim regulation transmitted to OAL 12–31–98 as permanent rulemaking with amendments and filed 2–17–99; operative 2–17–99 pursuant to Government Code section 11400.20 (Register 99, No. 8).
3. Editorial correction repealing erroneous HISTORY 2 and renumbering and amending former HISTORY 3 to HISTORY 2 (Register 99, No. 12).

§ 617.6. Presentation Limited to Written Materials.

(a) If the board, Executive Officer, or hearing officer determine that only written evidence or argument shall be permitted as provided by these regulations, all parties shall receive a reasonable opportunity to submit written materials to the board or hearing officer.

(b) Written materials may include:

(1) a statement of legal and factual issues;

(2) supporting documentation; and

(3) legal and factual arguments supporting the party's contentions.

(c) The board or hearing officer may request additional documentation or legal arguments from the parties if necessary in the board's or hearing officer's discretion.

NOTE: Authority cited: Sections 11400.20, 13920, 13968(a) and 13974, Government Code; and Section 4906, Penal Code. Reference: Sections 11425.10(a)(1), 11445.10, 11445.20(c), 11445.40, 11445.50, 13963 and 13973, Government Code; Section 4903, Penal Code; and Sections 10306 and 12102(h), Public Contract Code.

HISTORY

1. New section filed 10–8–97 as an interim regulation pursuant to Government Code section 11400.20; operative 10–8–97 (Register 97, No. 41). Interim regulations expire on 12–31–98 unless earlier amended or repealed.
2. Interim regulation transmitted to OAL 12–31–98 as permanent rulemaking with amendments and filed 2–17–99; operative 2–17–99 pursuant to Government Code section 11400.20 (Register 99, No. 8).
3. Editorial correction repealing erroneous HISTORY 2 and renumbering and amending former HISTORY 3 to HISTORY 2 (Register 99, No. 12).

§ 617.7. Presentation of Oral Evidence.

(a) Oral evidence shall be taken under oath or affirmation in all hearings, except an informal hearing.

(b) Oral evidence may be taken under oath or affirmation in an informal hearing.

(c) An oath or affirmation may be administered by:

(1) a member of the board;

(2) the hearing officer;

(3) the hearing reporter;

(4) a staff member of the board, as directed by the board.

(d) If oral evidence is permitted, each party has the following rights:

(1) to examine witnesses called by the party;

(2) to introduce exhibits into the hearing record; and

(3) to rebut evidence.

(e) The board or hearing officer may question any party or witness.

(f) A party shall not be permitted to cross examine witnesses unless provided by regulation, or permitted by the discretion of the board, Executive Officer, or hearing officer.

(1) Cross examination of a witness may be permitted if it is necessary for a proper determination of the matter.

(2) In order to determine whether cross examination is necessary, the board, Executive Officer, or hearing officer may require a party to identify the issues that would be explored in cross examination.

(A) A party may be required to state that confidential facts or sources would be involved in the issues to be explored in cross examination, but may not be required to disclose the confidential facts or sources.

(3) If cross examination is permitted, a witness may be cross–examined on any relevant matter even though the matter was not covered during the direct examination.

(g) A party appearing at a hearing shall have the witnesses and evidence present and be ready to proceed when the matter is called.

NOTE: Authority cited: Sections 11400.20, 13920, 13968(a) and 13974, Government Code; and Section 4906, Penal Code. Reference: Sections 11425.10(a)(1), 11445.10, 11445.20(c), 11445.30, 11445.40, 11445.50, 11445.60, 13911, 13963 and 13973, Government Code; Section 4903, Penal Code; and Sections 10306 and 12102(h), Public Contract Code.

HISTORY

1. New section filed 10–8–97 as an interim regulation pursuant to Government Code section 11400.20; operative 10–8–97 (Register 97, No. 41). Interim regulations expire on 12–31–98 unless earlier amended or repealed.
2. Interim regulation transmitted to OAL 12–31–98 as permanent rulemaking with amendments and filed 2–17–99; operative 2–17–99 pursuant to Government Code section 11400.20 (Register 99, No. 8).
3. Editorial correction repealing erroneous HISTORY 2 and renumbering and amending former HISTORY 3 to HISTORY 2 (Register 99, No. 12).

§ 617.8. Official Notice.

(a) The board or hearing officer shall take official notice of those matters which must be judicially noticed by a court under Evidence Code section 451.

(b) The board or hearing officer may take official notice of those matters which may be judicially noticed by a court under Evidence Code section 452.

(c) Evidence Code sections 455 and 459, subdivisions (c) and (d) shall not apply.

NOTE: Authority cited: Sections 11400.20, 13920, 13968(a) and 13974, Government Code; and Section 4906, Penal Code. Reference: Sections 11425.10(a)(1), 11425.50(c), 13963 and 13973, Government Code; Section 4903, Penal Code; and Sections 10306 and 12102(h), Public Contract Code.

HISTORY

1. New section filed 10–8–97 as an interim regulation pursuant to Government Code section 11400.20; operative 10–8–97 (Register 97, No. 41). Interim regulations expire on 12–31–98 unless earlier amended or repealed.
2. Interim regulation transmitted to OAL 12–31–98 as permanent rulemaking with amendments and filed 2–17–99; operative 2–17–99 pursuant to Government Code section 11400.20 (Register 99, No. 8).
3. Editorial correction repealing erroneous HISTORY 2 and renumbering and amending former HISTORY 3 to HISTORY 2 (Register 99, No. 12).

§ 617.9. Failure to Appear or Proceed.

The failure of a party to appear at a hearing, or to proceed with a hearing, shall constitute a withdrawal of the action or request for hearing, unless an extension of time for submission of documents or a continuance of the hearing has been granted.

NOTE: Authority cited: Sections 11400.20, 13920, 13968(a) and 13974, Government Code; and Section 4906, Penal Code. Reference: Sections 13963 and 13973, Government Code; Section 4903, Penal Code; and Sections 10306 and 12102(h), Public Contract Code.

HISTORY

1. New section filed 10–8–97 as an interim regulation pursuant to Government Code section 11400.20; operative 10–8–97 (Register 97, No. 41). Interim regulations expire on 12–31–98 unless earlier amended or repealed.
2. Interim regulation transmitted to OAL 12–31–98 as permanent rulemaking with amendments and filed 2–17–99; operative 2–17–99 pursuant to Government Code section 11400.20 (Register 99, No. 8).
3. Editorial correction repealing erroneous HISTORY 2 and renumbering and amending former HISTORY 3 to HISTORY 2 (Register 99, No. 12).

Subarticle 5. Prohibited Conduct

§ 618.1. Prohibited Communication.

(a) If the board is a party to a pending proceeding, no board employee shall communicate about any issue in the proceeding to the board, a board member, or hearing officer.

(1) A communication is not prohibited by this subsection as long as all parties to the proceeding were given reasonable notice of, and an opportunity to participate in, the communication.

(b) No person or representative who has an interest in the outcome of a pending proceeding shall communicate about any issue in the proceeding with the board, a board member, or the hearing officer while the proceeding is pending before the board.

(1) A communication is not prohibited by this subsection as long as all parties to the proceeding were given reasonable notice of, and an opportunity to participate in, the communication.

(c) A hearing officer who is not a board member shall not communicate about any issue in the proceeding with the board or a board member while the proceeding is pending before the board.

(d) The following communications are not prohibited by subsection (a):

(1) a communication required to resolve an ex parte matter that is authorized by statute; or

(2) a communication concerning a matter of procedure or practice that is not in dispute.

(e) The following communications from a board employee are not prohibited by subsection (a):

(1) an employee who has not served as an investigator or advocate in the proceeding, as defined in section 615.11 may:

(A) provide assistance and advice about the issues to be resolved; or

(B) evaluate the evidence in the record;

(2) a communication about a settlement proposal that is advocated by the board employee.

(f) For the purpose of this section, a proceeding is pending before the board from the time an application or bid protest is submitted to the board until the board makes a final decision about it.

(1) For the purpose of this section, a final decision is made by the board upon adoption of a decision under sections 619.2 or 619.5.

NOTE: Authority cited: Sections 11400.20, 13920, 13968(a) and 13974, Government Code; and Section 4906, Penal Code. Reference: Sections 11425.10(a)(8), 11430.10, 11430.20, 11430.30, 11430.70 and 11430.80, Government Code.

HISTORY

1. New subarticle 5 (sections 618.1–618.4) and section filed 10–8–97 as an interim regulation pursuant to Government Code section 11400.20; operative 10–8–97 (Register 97, No. 41). Interim regulations expire on 12–31–98 unless earlier amended or repealed.
2. Interim regulation transmitted to OAL 12–31–98 as permanent rulemaking with amendments and filed 2–17–99; operative 2–17–99 pursuant to Government Code section 11400.20 (Register 99, No. 8).
3. Editorial correction repealing erroneous HISTORY 2 and renumbering and amending former HISTORY 3 to HISTORY 2 (Register 99, No. 12).

§ 618.2. Disclosure of Prohibited Communication.

(a) A board member or hearing officer, who received a communication about a pending proceeding prior to serving as a board member or hearing officer that would violate section 618.1 if it had been received while presiding at a hearing, shall promptly:

(1) disclose the content of the communication on the record; and

(2) give all parties an opportunity to respond under subdivision (d).

(b) If the board, a board member, or hearing officer receives a communication in violation of section 618.1 the board or hearing officer shall include the following in the record of the hearing:

(1) a copy of any written communication;

(2) a copy of any written response to a written or oral communication;

(3) a memorandum about an oral communication that shall include:

(A) the substance of the oral communication;

(B) the substance of any oral response to the communication; and

(C) the identity of each person from whom the communication was received.

(c) The board or hearing officer shall notify all parties that:

(1) an impermissible ex parte communication was received; and

(2) that the materials required by subsection (b) have been included in the hearing record.

(d) A party may comment on the prohibited ex parte communication if the party requests to comment within ten days of receiving the notice required by this section.

(1) The board or hearing officer may allow a party who makes a timely request to present evidence about the subject of the communication.

(2) The board or hearing officer may reopen the record of a hearing that has been concluded in order to take evidence permitted by subsection (d)(1).

NOTE: Authority cited: Sections 11400.20, 13920, 13968(a) and 13974, Government Code; and Section 4906, Penal Code. Reference: Sections 11430.40 and 11430.50, Government Code.

HISTORY

1. New section filed 10–8–97 as an interim regulation pursuant to Government Code section 11400.20; operative 10–8–97 (Register 97, No. 41). Interim regulations expire on 12–31–98 unless earlier amended or repealed.
2. Interim regulation transmitted to OAL 12–31–98 as permanent rulemaking with amendments and filed 2–17–99; operative 2–17–99 pursuant to Government Code section 11400.20 (Register 99, No. 8).
3. Editorial correction repealing erroneous HISTORY 2 and renumbering and amending former HISTORY 3 to HISTORY 2 (Register 99, No. 12).

§ 618.3. Contempt.

(a) A person is subject to a contempt sanction for any of the following:

(1) disobedience of or resistance to a lawful order;

(2) refusal to take the oath or affirmation as a witness;

(3) obstruction or interruption of a hearing by:

(A) disorderly, contemptuous, or insolent behavior during a hearing toward the board, a board member, or a hearing officer;

(B) breach of the peace, boisterous conduct or violent disturbance during a hearing; or

(C) other unlawful interference with the process or proceedings;

(4) violating the rules against ex parte communication in section 618.1; and

(5) failure or refusal, without substantial justification, to comply with an order of the board or hearing officer.

(b) The board or hearing officer may certify the facts that justify a contempt sanction to the superior court in the county where the hearing is held.

(c) Copies of the following shall be served on the person subject to the contempt sanction:

(1) the certified statement required by subsection (b); and

(2) the order to show cause issued by the superior court.

(d) A contempt proceeding is governed by Code of Civil Procedure, sections 1209–1222.

NOTE: Authority cited: Sections 11400.20, 13920, 13968(a) and 13974, Government Code; and Section 4906, Penal Code. Reference: Sections 11455.10 and 11455.20, Government Code.

HISTORY

1. *New section filed 10–8–97* as an interim regulation pursuant to Government Code section 11400.20; operative 10–8–97 (Register 97, No. 41). Interim regulations expire on 12–31–98 unless earlier amended or repealed.
2. Interim regulation transmitted to OAL 12–31–98 as permanent rulemaking with amendments and filed 2–17–99; operative 2–17–99 pursuant to Government Code section 11400.20 (Register 99, No. 8).
3. Editorial correction repealing erroneous HISTORY 2 and renumbering and amending former HISTORY 3 to HISTORY 2 (Register 99, No. 12).

§ 618.4. Sanctions.

(a) The board or hearing officer may order a party, the party's representative, or both, to pay reasonable expenses, including attorney's fees, as a result of:

(1) bad faith or frivolous actions or tactics; or

(2) actions or tactics solely intended to cause unnecessary delay.

(b) For the purpose of this section, actions include, but are not limited to:

(1) the making or opposing of motions, objections, or requests; and

(2) the failure to comply with a lawful order of the board or hearing officer.

(c) For the purpose of this section, frivolous means:

(1) totally without merit; or

(2) for the sole purpose of harassing another party or the board.

(d) Before imposing sanctions under this section, the board or hearing officer shall provide the party notice and an opportunity to be heard.

(1) The notice and opportunity to be heard may occur either at the time the issue of sanctions is raised, or at another time.

NOTE: Authority cited: Sections 11400.20, 13920, 13968(a) and 13974, Government Code; and Section 4906, Penal Code. Reference: Section 11455.30, Government Code.

HISTORY

1. New section filed 10–8–97 as an interim regulation pursuant to Government Code section 11400.20; operative 10–8–97 (Register 97, No. 41). Interim regulations expire on 12–31–98 unless earlier amended or repealed.
2. Interim regulation transmitted to OAL 12–31–98 as permanent rulemaking with amendments and filed 2–17–99; operative 2–17–99 pursuant to Government Code section 11400.20 (Register 99, No. 8).
3. Editorial correction repealing erroneous HISTORY 2 and renumbering and amending former HISTORY 3 to HISTORY 2 (Register 99, No. 12).

Subarticle 6. Hearing Decisions

§ 619.1. Decision.

(a) This section applies to decisions of the board and proposed decisions of hearing officers.

(b) All hearing decisions and proposed decisions shall:

(1) be written; and

(2) contain a statement of the factual and legal bases for the decision.

(c) If the factual basis for the decision includes a determination based substantially on the credibility of a witness, the decision shall identify any specific evidence of the demeanor, manner or attitude of the witness that supports the credibility determination.

(d) The decision shall be based on evidence in the hearing record and on matters subject to official notice under section 617.8.

(e) The board members or hearing officer may use relevant experience, technical competence and specialized knowledge to evaluate the evidence.

NOTE: Authority cited: Sections 11400.20, 13920, 13968(a) and 13974, Government Code; and Section 4906, Penal Code. Reference: Sections 11425.10(a)(6), 11425.50(c) and 13969.1(a), Government Code.

HISTORY

1. New subarticle 6 (sections 619.1–619.7) and section filed 10–8–97 as an interim regulation pursuant to Government Code section 11400.20; operative 10–8–97 (Register 97, No. 41). Interim regulations expire on 12–31–98 unless earlier amended or repealed.
2. Interim regulation transmitted to OAL 12–31–98 as permanent rulemaking with amendments and filed 2–17–99; operative 2–17–99 pursuant to Government Code section 11400.20 (Register 99, No. 8).
3. Editorial correction repealing erroneous HISTORY 2 and renumbering and amending former HISTORY 3 to HISTORY 2 (Register 99, No. 12).

§ 619.2. Decision by Board.

(a) A decision of the board about a hearing it conducted shall be made by the board.

(b) The board shall make its decision either at the conclusion of the hearing, or at another board meeting.

(c) The board may adopt in whole the written recommendation of board staff as its decision if the recommendation complies with section 619.1.

(d) If the board does not adopt in whole the staff recommendation:

(1) the board shall make a statement of decision that includes:

(A) the decision made about the application; and

(B) the reasons for the decision; and

(2) board staff shall prepare a written decision consistent with the board's statement of decision.

(e) The decision of the board is effective upon its vote.

(f) The board shall send a copy of its written decision to the parties.

(1) The board need not send a copy of its written decision under subsection (c) to the parties if the parties received, prior to the hearing, a copy of the staff recommendation that was adopted in whole as the board decision.

NOTE: Authority cited: Sections 11400.20, 13920, 13968(a) and 13974, Government Code; and Section 4906, Penal Code. Reference: Sections 11425.10(a)(6), 11425.50, 13908 and 13969.1(a), Government Code.

HISTORY

1. New section filed 10–8–97 as an interim regulation pursuant to Government Code section 11400.20; operative 10–8–97 (Register 97, No. 41). Interim regulations expire on 12–31–98 unless earlier amended or repealed.
2. Interim regulation transmitted to OAL 12–31–98 as permanent rulemaking with amendments and filed 2–17–99; operative 2–17–99 pursuant to Government Code section 11400.20 (Register 99, No. 8).
3. Editorial correction repealing erroneous HISTORY 2 and renumbering and amending former HISTORY 3 to HISTORY 2 (Register 99, No. 12).

§ 619.3. Proposed Decision by Hearing Officer.

(a) The hearing officer may take the matter under submission at the conclusion of the hearing.

(b) The hearing officer shall prepare a proposed decision for the board that complies with section 619.1.

(c) The proposed decision shall be submitted to the Executive Officer.

NOTE: Authority cited: Sections 11400.20, 13920, 13968(a) and 13974, Government Code; and Section 4906, Penal Code. Reference: Sections 11425.10(a)(6) and 11425.50, Government Code.

HISTORY

1. New section filed 10–8–97 as an interim regulation pursuant to Government Code section 11400.20; operative 10–8–97 (Register 97, No. 41). Interim regulations expire on 12–31–98 unless earlier amended or repealed.
2. Interim regulation transmitted to OAL 12–31–98 as permanent rulemaking with amendments and filed 2–17–99; operative 2–17–99 pursuant to Government Code section 11400.20 (Register 99, No. 8).
3. Editorial correction repealing erroneous HISTORY 2 and renumbering and amending former HISTORY 3 to HISTORY 2 (Register 99, No. 12).

§ 619.4. Notice and Public Comment on Proposed Decision.

(a) Copies of the proposed decision and notice of the board meeting at which consideration of the proposed decision is scheduled shall be mailed or delivered to all parties.

(b) A party may submit written argument concerning whether or not the board should adopt the proposed decision.

(1) A written argument shall not exceed ten pages, including any attachments.

(c) The Executive Officer may establish a schedule for the submission of written argument concerning the proposed decision.

(d) Written argument concerning the proposed decision may address the following issues, or any issue identified by the Executive Officer:

(1) are the facts stated in the proposed decision supported by the evidence in the hearing record?

(2) does the proposed decision contains an accurate statement of the applicable law?

(3) does the proposed decision correctly apply the applicable law?

(4) is there additional evidence that the board should consider?

(5) if the board should consider additional evidence, why was it not presented at the hearing?

(6) if the board rejects the proposed decision, what further actions should the board take to resolve the matter?

NOTE: Authority cited: Sections 11400.20, 13920, 13968(a) and 13974, Government Code; and Section 4906, Penal Code. Reference: Section 11125.7, Government Code.

HISTORY

1. New section filed 10–8–97 as an interim regulation pursuant to Government Code section 11400.20; operative 10–8–97 (Register 97, No. 41). Interim regulations expire on 12–31–98 unless earlier amended or repealed.
2. Interim regulation transmitted to OAL 12–31–98 as permanent rulemaking with amendments and filed 2–17–99; operative 2–17–99 pursuant to Government Code section 11400.20 (Register 99, No. 8).
3. Editorial correction repealing erroneous HISTORY 2 and renumbering and amending former HISTORY 3 to HISTORY 2 (Register 99, No. 12).

§ 619.5. Action on Proposed Decision by Board.

(a) The Executive Officer shall schedule consideration of a hearing officer's proposed decision on the agenda of a board meeting.

(b) The board may take any of the following actions concerning the proposed decision:

(1) adopt the proposed decision in whole or in part;

(2) reject the proposed decision in whole or in part; or

(3) defer decision and request the hearing officer to address specific issues or provide additional information.

(c) If the board rejects the proposed decision in whole or in part, it may take any of the following actions:

(1) decide the case itself after reviewing the record, including a transcript of the hearing;

(2) decide the case itself based upon a statement of facts agreed to by the parties;

(3) decide the case itself by conducting a hearing to take additional evidence or argument;

(4) order the hearing officer to take additional evidence or argument; or

(5) order the hearing officer to address specific issues in the proposed decision.

(d) If the board rejects the proposed decision in whole or in part and orders a hearing officer to take additional evidence under subsection (c)(4), or respond to specific issues under subsection (c)(5), the hearing officer:

(1) may take additional evidence as directed by the board or as necessary in the hearing officer's discretion; and

(2) shall prepare a proposed decision as required by section 619.3.

(e) If the board remands the matter to a hearing officer under subsection (c)(4) or (c)(5), it shall be returned to the hearing officer who prepared the proposed decision, if practicable.

(1) If the hearing officer who prepared the proposed decision is not reasonably available, the Executive Officer may assign it to another hearing officer.

(2) If the matter is assigned to another hearing officer, the new hearing officer shall review the entire record, including a transcript, before taking additional evidence.

NOTE: Authority cited: Sections 11400.20, 13920, 13968(a) and 13974, Government Code; and Section 4906, Penal Code. Reference: Sections, 11440.10, 113963, 13908 and 13973, Government Code; Section 4903, Penal Code; and Sections 10306 and 12102(h), Public Contract Code.

HISTORY

1. New section filed 10–8–97 as an interim regulation pursuant to Government Code section 11400.20; operative 10–8–97 (Register 97, No. 41). Interim regulations expire on 12–31–98 unless earlier amended or repealed.
2. Interim regulation transmitted to OAL 12–31–98 as permanent rulemaking with amendments and filed 2–17–99; operative 2–17–99 pursuant to Government Code section 11400.20 (Register 99, No. 8).
3. Editorial correction repealing erroneous HISTORY 2 and renumbering and amending former HISTORY 3 to HISTORY 2 (Register 99, No. 12).

§ 619.6. Correction of Decision.

(a) The board may modify a decision or proposed decision before or after adoption to correct a mistake or clerical error.

(b) A copy of the modified decision shall be sent to all parties.

NOTE: Authority cited: Sections 11400.20, 11415.10(a), 13920, 13968(a) and 13974, Government Code; and Section 4906, Penal Code. Reference: Section 11518.5(d), Government Code.

HISTORY

1. New section filed 10–8–97 as an interim regulation pursuant to Government Code section 11400.20; operative 10–8–97 (Register 97, No. 41). Interim regulations expire on 12–31–98 unless earlier amended or repealed.
2. Interim regulation transmitted to OAL 12–31–98 as permanent rulemaking with amendments and filed 2–17–99; operative 2–17–99 pursuant to Government Code section 11400.20 (Register 99, No. 8).
3. Editorial correction repealing erroneous HISTORY 2 and renumbering and amending former HISTORY 3 to HISTORY 2 (Register 99, No. 12).

§ 619.7. Precedent Decisions.

(a) The board may designate any of its decisions in whole or in part as a precedent decision.

(b) The board may designate a prior decision as a precedent decision.

(c) A decision may be designated as a precedent decision if it:

(1) addresses a legal or factual issue of general public interest;

(2) resolves a conflict in the law;

(3) provides an overview of existing law or policy;

(4) clarifies existing law or policy;

(5) establishes a new rule of law or policy; or

(6) contains a significant legal or policy determination of general application.

(d) A precedential decision may be used as legal authority to interpret and implement the law in subsequent board decisions.

(e) The board may reverse in whole or in part the prior designation of a decision as a precedent decision.

(f) The board shall maintain an index of significant legal and policy determinations contained in precedent decisions.

(1) The index shall be updated annually, unless no new precedent decisions were designated.

(2) The index shall be available for purchase by the public.

(A) The availability of the index shall be publicized annually in the California Regulatory Notice Register.

NOTE: Authority cited: Sections 11400.20, 13920, 13968(a) and 13974, Government Code; and Section 4906, Penal Code. Reference: Section 11425.60, Government Code.

HISTORY

1. New section filed 10–8–97 as an interim regulation pursuant to Government Code section 11400.20; operative 10–8–97 (Register 97, No. 41). Interim regulations expire on 12–31–98 unless earlier amended or repealed.
2. Interim regulation transmitted to OAL 12–31–98 as permanent rulemaking with amendments and filed 2–17–99; operative 2–17–99 pursuant to Government Code section 11400.20 (Register 99, No. 8).
3. Editorial correction repealing erroneous HISTORY 2 and renumbering and amending former HISTORY 3 to HISTORY 2 (Register 99, No. 12).

Article 3. Presentation of Claims to the Controller

§ 620. Segregation.

Claims shall be segregated by funds, by appropriations, and by fiscal years in which the obligations were incurred.

§ 621. Explanation.

Every unusual item of a claim when submitted shall be explained adequately.

§ 622. Information Required.

Every claim and every supporting pay roll schedule, or schedule of bills filed, shall be typewritten and shall show:

(a) The name of the department, board, commission, agency or officer.

(b) The total amount claimed.

(c) The designation of the appropriation and, excepting the General Fund, the fund against which the claim is filed.

(d) The chapter number and year of the statutes making the appropriation.

(e) The fiscal year in which the indebtedness was incurred.

§ 622.1. Claims Recorded on Electronic Tape.

(a) Subject to the approval of the Controller, claims recorded on electronic tape may be presented under the following conditions:

(1) Each such claim shall consist of the electronic tape listing each payee and the amount of payment. A written reproduction of the electronic tape will be retained by the agency, or the information so provided will be retained by the agency on electronic tape, as a part of its records for the period required by the Controller. Original claim documents supporting the electronic tape listing, or reproductions thereof, shall be retained by the agency for the same period as agency copies of claim schedules unless otherwise provided by law. Such original claims documents, or reproductions thereof, shall be maintained in a manner that will enable verification of the propriety of claims recorded on the electronic tape.

(b) In accordance with Section 624, each claim shall contain a certificate reading as follows:

"I hereby certify under penalty of perjury as follows:

"That I am a duly appointed, qualified, and acting officer of the herein named state agency. That the respective amounts and payees included in this claim have been recorded on that certain electronic tape identified in the within schedule. That a written reproduction, listing each payee and the amount of payment, was prepared from said tape and will be retained as a part of the official records of said state agency, or the information so provided will be retained on electronic tape. That the respective amounts, payees, and totals are true and correct as set forth on said electronic tape and in said written reproduction, or retained electronic tape. That original claim documents, or reproductions thereof, have been retained and are maintained in a manner that will enable verification of the propriety of the amounts claimed. That payments are properly payable to each and all of the claimants as contained therein, and that such payments are authorized in the amount, for the period, and to the respective payees as indicated therein under all governing laws and regulations. That I have not violated any of the provisions of Sections 1090 to 1096, inclusive, Government Code."

(c) Claims presented on electronic tape pursuant to this section, are excepted from the requirements of Sections 650 to 656, inclusive.

NOTE: Authority cited: Section 13920, Government Code. Reference: Section 925.6, 12410, and 19463, Government Code.

HISTORY

1. Amendment filed 2–28–80; designated effective 4–1–80 (Register 80, No. 9). For prior history, see Registers 71, No. 17; 70, No. 20; and 68, No. 27.

§ 623. Additional Information Required.

In addition to the information required under Section 622 every schedule of bills filed shall show:

(a) The name and address of the person in whose favor the warrant is to be drawn.

(b) The items briefly and clearly stated in chronological order, together with all the charges for the period covered by the schedule.

(c) All entries shall be carried to the dollars and cents column direct.

(d) No items shall be interlined.

HISTORY

1. Originally published 3–22–45 (Title 2).
2. Amendment filed 10–1–49 as an emergency (Register 18, No. 1).
3. Repealer of subsection (e) filed 11–21–57; effective thirtieth day thereafter (Register 57, No. 20).

§ 624. Approval of Claims.

Each claim shall be approved by the department head or another person properly authorized, or, in the case of boards and commissions, by the secretary or by some other person, pursuant to a duly adopted resolution of the board or commission. Unless otherwise provided by law, every claim shall be accompanied by an affidavit or certificate under penalty of perjury of the officer, agent or employee directly responsible for the claim.

HISTORY

1. Amendment filed 10–29–51 as an emergency; effective upon filing (Register 26, No. 3).

§ 625. Correction of Claims.

(a) Items or the amounts of items which are incorrect or are not proper charges against the State shall be corrected or eliminated by the Controller, who shall indicate his reason for the change. The total amount claimed shall be adjusted accordingly.

(b) The Controller may, however, in his discretion, disregard net errors of $5 or under in each individual claim if in doing so time and expense will be saved.

(c) If the items eliminated or amounts reduced are proper charges against the State, they may be resubmitted with necessary correction or explanation with the next claim submitted. Such items shall be clearly identified and explained.

HISTORY

1. Originally published 3–22–45 (Title 2).
2. Amendment filed 12–16–48 as an emergency; designated to be effective 12–20–48 (Register 14, No. 8).
3. Amendment filed 6–18–58; effective thirtieth day thereafter (Register 59, No. 10).
4. Amendment of subsection (b) filed 12–17–69 as procedural and organizational; effective upon filing (Register 69, No. 51).

§ 626. Rejection of Claims.

HISTORY

1. Repealer filed 6–18–59; effective thirtieth day thereafter (Register 59, No. 10).

Article 3.1. Eligibility of Alien for Programs

Subarticle 1. General Provisions

§ 627.1. Applicability.

(a) This article applies to applications submitted to the following programs:

(1) erroneously–convicted felons under Penal Code sections 4900–4901;

(2) citizens benefiting the public under Government Code section 13972; and

(3) persons who provide information leading to the location of missing children under Government Code section 13974.1.

NOTE: Authority cited: Sections 13920, 13974 and 13974.1, Government Code; and Section 4906, Penal Code. Reference: 8 U.S.C. Section 1621.

HISTORY

1. New article 3.1 (subarticles 1–3, sections 627.1–629.2), subarticle 1 (sections 627.1–627.5) and section filed 3–24–98 as an emergency; operative 3–24–98 (Register 98, No. 13). A Certificate of Compliance must be transmitted to OAL by 7–22–98 or emergency language will be repealed by operation of law on the following day.
2. New article 3.1 (subarticles 1–3, sections 627.1–629.2), subarticle 1 (sections 627.1–627.5) and section refiled 7–21–98 as an emergency; operative 7–21–98 (Register 98, No. 30). A Certificate of Compliance must be transmitted to OAL by 11–18–98 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 7–21–98 order, including repealer of subsection (a)(2), subsection renumbering, and amendment of NOTE, transmitted to OAL 11–10–98 and filed 12–28–98 (Register 99, No. 1).

§ 627.2. General Provisions.

(a) All eligibility requirements contained in this article shall be applied without regard to the race, creed, color, gender, religion, or national origin of the person submitting an application.

(b) Nothing in this article shall be construed as withdrawing eligibility for:

(1) necessary treatment of an emergency medical condition; and

(2) the testing and treatment of symptoms of a communicable disease.

NOTE: Authority cited: Sections 13920, 13974 and 13974.1, Government Code; and Section 4906, Penal Code. Reference: 8 U.S.C. Section 1621(b).

HISTORY

1. New section filed 3–24–98 as an emergency; operative 3–24–98 (Register 98, No. 13). A Certificate of Compliance must be transmitted to OAL by 7–22–98 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 7–21–98 as an emergency; operative 7–21–98 (Register 98, No. 30). A Certificate of Compliance must be transmitted to OAL by 11–18–98 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 7–21–98 order, including amendment of NOTE, transmitted to OAL 11–10–98 and filed 12–28–98 (Register 99, No. 1).

§ 627.3. Definitions.

(a) Unless otherwise provided, the terms used in this article shall have the same meaning given the terms in 8 U.S.C. section 1101(a).

(b) As used in this article:

(1) "Alien" means any person not a citizen or national of the United States, as defined in 8 U.S.C. section 1101(a)(3);

(2) "Applicant" means a person submitting an application as defined in subsection (b)(3);

(3) "Application" means the following:

(A) a claim for compensation for erroneously–convicted felons under Penal Code sections 4900–4901;

(B) a claim for compensation for citizens benefiting the public under Government Code section 13972; and

(C) a claim for compensation for persons who provide information leading to the location of missing children under Government Code section 13974.1;

(4) "Benefits" means any payment, compensation or reimbursement under a program;

(5) "Board" means the State Board of Control;

(6) "Emergency medical condition" means a medical condition manifesting itself by acute symptoms of sufficient severity so that the following could reasonably be expected to result without immediate medical attention:

(A) the patient's health would be placed in serious jeopardy;

(B) serious impairment to bodily function; or

(C) serious dysfunction of any bodily organ or part;

(7) "INS" means the U.S. Immigration and Naturalization Service;

(8) "Nonimmigrant Alien" means those aliens who are not classified as immigrants under 8 U.S.C. section 1101(a)(15);

(9) "Program" means the following programs administered by the Board:

(A) erroneously–convicted felons under Penal Code sections 4900–4901;

(B) citizens benefiting the public under Government Code section 13972; and

(C) persons who provide information leading to the location of missing children under Government Code section 13974.1;

(10) "Qualified Alien" means an alien who, at the time the alien files an application in a program, is:

(A) an alien who is lawfully admitted for permanent residence under the Immigration and Nationality Act, 8 U.S.C. section 1101 et seq.;

(B) an alien who is granted asylum under 8 U.S.C. section 1158;

(C) a refugee who is admitted to the United States under 8 U.S.C. section 1157;

(D) an alien who is paroled into the United States under 8 U.S.C. section 1182(d)(5) for a period of at least one year;

(E) an alien whose deportation is being withheld under 8 U.S.C. section 1253(h) (as in effect immediately before the effective date of section 307 of division C of Public Law 104–208) or under 8 U.S.C. section 1251(b)(3) (as amended by section 305(a) of division C of Public Law 104–208);

(F) an alien who is granted conditional entry under 8 U.S.C. section 1153(a)(7) as it was in effect prior to April 1, 1980;

(G) an alien who is a Cuban or Haitian entrant (as defined in section 501(e) of the Refugee Education Assistance Act of 1980 (8 U.S.C. § 1522)); and

(H) an alien who meets all of the following conditions:

1. the alien has been battered or subjected to extreme cruelty in the United States by:

A. a spouse;

B. a parent;

C. a member of the spouse's family residing in the alien's household and the spouse or parent consented to or acquiesced in the battery or cruelty; or

D. a member of the parent's family residing in the alien's household and the spouse or parent consented to or acquiesced in the battery or cruelty; and

E. for purposes of this subsection, the term "battered or subjected to extreme cruelty" includes, but is not limited to, being the victim of any act or threatened act of violence including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence;

2. there is substantial connection between the battery or cruelty and the need for the program's benefits as follows:

A. for purposes of this subsection, the following circumstances demonstrate a substantial connection between the battery or cruelty and the need for the benefits to be provided:

i. the benefits are needed to enable the alien to become self-sufficient following separation from the abuser;

ii. the benefits are needed to enable the alien to escape the abuser and/or the community in which the abuser lives, or to ensure the safety of the alien from the abuser;

iii. the benefits are needed due to a loss of financial support resulting form the alien's separation from the abuser;

iv. the benefits are needed because the battery or cruelty, separation from the abuser, or work absences or lower job performance resulting from the battery or extreme cruelty or from legal proceedings relating thereto (including resulting child support, child custody, and divorce actions) cause the alien to lose his or her job or to earn less or to require the alien to leave his or her job for safety reasons;

v. the benefits are needed because the alien requires medical attention or mental health counseling, or has become disabled, as a result of the battery or extreme cruelty;

vi. the benefits are needed because the loss of a dwelling or source of income or fear of the abuser following separation from the abuser jeopardizes the alien's ability to care for his or her children (e.g., inability to house, feed, or clothe children or to put children into day care for fear of being found by the abuser);

vii. the benefits are needed to alleviate nutritional risk or need resulting from the abuse or following separation from the abuser;

viii. the benefits are needed to provide medical care during a pregnancy resulting from the abuser's sexual assault or abuse of, or relationship with, the alien and/or to care for any resulting children; or

ix. where medical coverage and/or health care services are needed to replace medical coverage or health care services the alien had when living with the abuser;

3. the alien has been approved for or has a petition pending which sets forth a prima facie case for:

A. status as a spouse or a child of a United States citizen under 8 U.S.C. section 1154(a)(1)(A)(ii),(iii), or (iv);

B. classification under 8 U.S.C. section 1154(a)(1)(B)(ii) or (iii);

C. suspension of deportation and adjustment of status under 8 U.S.C. section 1254 as in effect prior to April 1, 1997 [Pub.L. 104–208, § 501 (effective September 30, 1996, pursuant to § 591); Pub. L. 104–208, § 304 (effective April 1, 1997, pursuant to § 309); Pub.L. 105–33, § 5581 (effective pursuant to § 5582)] (incorrectly codified as "cancellation of removal under section 240A of such Act [8 U.S.C. § 1229b] (as in effect prior to April 1, 1997)");

D. status as a spouse or child of a United States citizen under 8 U.S.C. section 1154(a)(1)(A)(i) or classification under 8 U.S.C. section 1154(a)(1)(B)(i); or

E. cancellation of removal under 8 U.S.C. section 1229b(b)(2);

4. the individual responsible for the battery or cruelty does not reside in the same household as the individual subjected to the battery or cruelty during the period for which program benefits are sought;

(I) an alien who meets all of the following conditions:

1. the alien's child has been battered or subjected to extreme cruelty in the United States by:

A. the alien's spouse;

B. a parent of the alien;

C. a member of the spouse's family residing in the alien's household, and the spouse or parent consented to, or acquiesced in the battery or cruelty; or

D. a member of the parent's family residing in the alien's household, and the spouse or parent consented to or acquiesced in the battery or cruelty; and

E. for purposes of this subsection, the term "battered or subjected to extreme cruelty" includes, but is not limited to, being the victim of any act or threatened act of violence including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence;

2. the alien did not actively participate in the battery or cruelty;

3. there is a substantial connection between the battery or cruelty and the need for the program's benefits as follows:

A. for purposes of this subsection, the following circumstances demonstrate a substantial connection between the battery or cruelty and the need for the benefits to be provided:

i. the benefits are needed to enable the alien's child to become self-sufficient following separation from the abuser;

ii. the benefits are needed to enable the alien's child to escape the abuser and/or the community in which the abuser lives, or to ensure the safety of the alien's child from the abuser;

iii. the benefits are needed due to a loss of financial support resulting from the alien's child's separation from the abuser;

iv. the benefits are needed because the battery or cruelty, separation from the abuser, or work absences or lower job performance resulting from the battery or extreme cruelty or from legal proceedings relating thereto (including resulting child support, child custody, and divorce actions) cause the alien's child to lose his or her job or to earn less or to require the alien's child to leave his or her job for safety reasons;

v. the benefits are needed because the alien's child requires medical attention or mental health counseling, or has become disabled, as a result of the battery or extreme cruelty;

vi. the benefits are needed because the loss of a dwelling or source of income or fear of the abuser following separation from the abuser jeopardizes the alien's child's ability to care for his or her children (e.g., inability to house, feed, or clothe children or to put children into day care for fear of being found by the abuser);

vii. the benefits are needed to alleviate nutritional risk or need resulting from the abuse or following separation from the abuser;

viii. the benefits are needed to provide medical care during a pregnancy resulting from the abuser's sexual assault or abuse of, or relationship with, the alien's child and/or to care for any resulting children; or

ix. where medical coverage and/or health care services are needed to replace medical coverage or health care services the alien's child had when living with the abuser;

4. the alien meets the requirements of section 627.3(b)(10)(H)3;

5. the individual responsible for the battery or cruelty does not reside in the same household as the individual subjected to the battery or cruelty during the period for which program benefits are sought;

(J) an alien child who meets all of the following conditions:

1. the alien child resides in the same household as a parent who has been battered or subjected to extreme cruelty in the United States by:

A. that parent's spouse; or

B. a member of the spouse's family residing in the same household as the parent and the spouse consented to, or acquiesced in the battery or cruelty; and

C. for purposes of this subsection, the term "battered or subjected to extreme cruelty" includes, but is not limited to being the victim of any act

or threatened act of violence including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence;

2. there is a substantial connection between the battery or cruelty and the need for the program's benefits as follows:

A. for purposes of this subsection, the following circumstances demonstrate a substantial connection between the battery or cruelty and the need for the benefits to be provided:

i. the benefits are needed to enable the alien child's parent to become self-sufficient following separation from the abuser;

ii. the benefits are needed to enable the alien child's parent to escape the abuser and/or the community in which the abuser lives, or to ensure the safety of the alien child's parent from the abuser;

iii. the benefits are needed due to a loss of financial support resulting from the alien child's parent's separation from the abuser;

iv. the benefits are needed because the battery or cruelty, separation from the abuser, or work absences or lower job performance resulting from the battery or extreme cruelty or from legal proceedings relating thereto (including resulting child support, child custody, and divorce actions) cause the alien child's parent to lose his or her job or to earn less or to require the alien child's parent to leave his or her job for safety reasons;

v. the benefits are needed because the alien child's parent requires medical attention or mental health counseling, or has become disabled, as a result of the battery or extreme cruelty;

vi. the benefits are needed because the loss of a dwelling or source of income or fear of the abuser following separation from the abuser jeopardizes the alien child's parent's ability to care for his or her children (e.g., inability to house, feed, or clothe children or to put children into day care for fear of being found by the abuser);

vii. the benefits are needed to alleviate nutritional risk or need resulting from the abuse or following separation from the abuser;

viii. the benefits are needed to provide medical care during a pregnancy resulting from the abuser's sexual assault or abuse of, or relationship with, the alien child's parent and/or to care for any resulting children; or

ix. where medical coverage and/or health care services are needed to replace medical coverage or health care services the alien child's parent had when living with the abuser;

3. the alien meets the requirements of section 627.3(b)(10)(H)3;

4. the individual responsible for the battery or cruelty does not reside in the same household as the individual subjected to the battery or cruelty during the period for which program benefits or assistance are sought;

(11) "SAVE" means the Systematic Alien Verification for Entitlements automated database.

NOTE: Authority cited: Sections 13920, 13974 and 13974.1, Government Code; and Section 4906, Penal Code. Reference: 8 U.S.C. Section 1641, and Department of Justice Notice, A.G. Order No. 2131-97 (62 Fed.Reg. 65285 (Dec. 11, 1997)).

HISTORY

1. New section filed 3-24-98 as an emergency; operative 3-24-98 (Register 98, No. 13). A Certificate of Compliance must be transmitted to OAL by 7-22-98 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 7-21-98 as an emergency; operative 7-21-98 (Register 98, No. 30). A Certificate of Compliance must be transmitted to OAL by 11-18-98 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 7-21-98 order, including repealer of subsections (a)(3)(B) and (a)(9)(B), subsection relettering, and amendment of subsections (a)(10)(H)1.E., (a)(10)(I)1.A. and E. and (a)(10)(J)1.C., and amendment of NOTE, transmitted to OAL 11-10-98 and filed 12-28-98 (Register 99, No. 1).

§ 627.4. Nonprofit Charitable Organizations.

A nonprofit charitable organization that provides federal, state, or local public benefits shall not be required to determine, verify or otherwise require proof of eligibility of any applicant under this article.

NOTE: Authority cited: Sections 13920, 13974 and 13974.1, Government Code; and Section 4906, Penal Code. Reference: 8 U.S.C. Section 1642(d).

HISTORY

1. New section filed 3-24-98 as an emergency; operative 3-24-98 (Register 98, No. 13). A Certificate of Compliance must be transmitted to OAL by 7-22-98 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 7-21-98 as an emergency; operative 7-21-98 (Register 98, No. 30). A Certificate of Compliance must be transmitted to OAL by 11-18-98 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 7-21-98 order, including amendment of section and NOTE, transmitted to OAL 11-10-98 and filed 12-28-98 (Register 99, No. 1).

§ 627.5. Report to INS.

NOTE: Authority cited: Sections 13920 and 13974, Government Code; Section 25381, Health and Safety Code; and Section 4906, Penal Code. Reference: 8 U.S.C. Section 1644.

HISTORY

1. New section filed 3-24-98 as an emergency; operative 3-24-98 (Register 98, No. 13). A Certificate of Compliance must be transmitted to OAL by 7-22-98 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 7-21-98 as an emergency; operative 7-21-98 (Register 98, No. 30). A Certificate of Compliance must be transmitted to OAL by 11-18-98 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 7-21-98 order, including repealer of section, transmitted to OAL 11-10-98 and filed 12-28-98 (Register 99, No. 1).

Subarticle 2. Eligibility

§ 628.1. Eligible Aliens.

(a) Only the following aliens are eligible for any of the programs:

(1) a qualified alien;

(2) a non-immigrant alien; and

(3) an alien paroled into the United States under 8 U.S.C. section 1182(d)(5) for less than one year.

(b) Subsection (a) does not apply to eligibility for:

(1) necessary treatment of an emergency medical condition; and

(2) the testing and treatment of symptoms of a communicable disease.

NOTE: Authority cited: Sections 13920, 13974 and 13974.1, Government Code; and Section 4906, Penal Code. Reference: 8 U.S.C. Section 1621.

HISTORY

1. New subarticle 2 (sections 628.1-628.7) and section filed 3-24-98 as an emergency; operative 3-24-98 (Register 98, No. 13). A Certificate of Compliance must be transmitted to OAL by 7-22-98 or emergency language will be repealed by operation of law on the following day.
2. New subarticle 2 (sections 628.1-628.7) and section refiled 7-21-98 as an emergency; operative 7-21-98 (Register 98, No. 30). A Certificate of Compliance must be transmitted to OAL by 11-18-98 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 7-21-98 order, including amendment of section heading and NOTE, transmitted to OAL 11-10-98 and filed 12-28-98 (Register 99, No. 1).

§ 628.2. Proof of Citizenship or Immigration Status.

(a) When filing an application for a program, an applicant shall declare, under penalty of perjury, to be:

(1) a citizen or other national of the United States;

(2) a qualified alien;

(3) a nonimmigrant alien; or

(4) an alien paroled into the United States under 8 U.S.C. section 1182(d)(5) for less than one year.

(b) The applicant must complete and sign form SBOC-EO-0107 (New 3/98).

(c) An applicant must submit documents that are of a type acceptable to the INS, as set forth in form SBOC-EO-0107 (Rev. 11/98) which serve as reasonable evidence of the applicant's citizenship or immigration status.

NOTE: Authority cited: Sections 13920, 13974 and 13974.1, Government Code; and Section 4906, Penal Code. Reference: Section 25373, Health and Safety Code; Section 4900, Penal Code; and 8 U.S.C. Sections 1621, 1625 and 1641.

HISTORY

1. New section filed 3-24-98 as an emergency; operative 3-24-98 (Register 98, No. 13). A Certificate of Compliance must be transmitted to OAL by 7-22-98

or emergency language will be repealed by operation of law on the following day.
2. New section refiled 7–21–98 as an emergency; operative 7–21–98 (Register 98, No. 30). A Certificate of Compliance must be transmitted to OAL by 11–18–98 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 7–21–98 order, including amendment of subsections (a)(1) and (c) and amendment of NOTE, transmitted to OAL 11–10–98 and filed 12–28–98 (Register 99, No. 1).

§ 628.3. Applicable Forms.

The Board may permit submission of the current version of a form identified in this article, or a form that supersedes one identified in this article.

NOTE: Authority cited: Sections 13920 and 13974, Government Code; and Section 4906, Penal Code. Reference: Sections 13972 and 13974.1, Government Code; and Section 4901, Penal Code.

HISTORY

1. New section filed 3–24–98 as an emergency; operative 3–24–98 (Register 98, No. 13). A Certificate of Compliance must be transmitted to OAL by 7–22–98 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 7–21–98 as an emergency; operative 7–21–98 (Register 98, No. 30). A Certificate of Compliance must be transmitted to OAL by 11–18–98 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 7–21–98 order, including amendment of NOTE, transmitted to OAL 11–10–98 and filed 12–28–98 (Register 99, No. 1).

§ 628.4. Time to Submit Proof of Citizenship or Immigration Status.

(a) The Board shall give an applicant who declares to be a citizen, a nonimmigrant alien, a qualified alien, or an alien paroled into the United States under 8 U.S.C. section 1182(d)(5) for less than one year, but fails to submit the documents required by subsections 628.2(c), 30 days to submit the required documents.

(b) The Board shall give an applicant who submits documents required by subsection 628.2(c) containing an alien registration or admission number, but whose immigration status is not verified by the SAVE system, 30 days to submit additional documents for verification.

NOTE: Authority cited: Sections 13920, 13974 and 13974.1, Government Code; and Section 4906, Penal Code. Reference: Sections 13972 and 13974.1, Government Code; Section 4901, Penal Code; and 8 U.S.C. Section 1625.

HISTORY

1. New section filed 3–24–98 as an emergency; operative 3–24–98 (Register 98, No. 13). A Certificate of Compliance must be transmitted to OAL by 7–22–98 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 7–21–98 as an emergency; operative 7–21–98 (Register 98, No. 30). A Certificate of Compliance must be transmitted to OAL by 11–18–98 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 7–21–98 order, including amendment of NOTE, transmitted to OAL 11–10–98 and filed 12–28–98 (Register 99, No. 1).

§ 628.5. Verification of Immigration Status by SAVE System.

(a) An applicant's immigration status shall be verified with the INS through the SAVE system, if the Board is authorized to do so.

(b) The secondary SAVE verification method shall be to send a photocopy of each document submitted by an applicant to show immigration status to INS for verification.

(c) The secondary SAVE verification method shall be used if:

(1) the SAVE system is unavailable;

(2) the SAVE system instructs the user to institute secondary verification;

(3) the documents presented include immigration status, but do not include an alien registration or alien admission number;

(4) the SAVE record verifies the alien registration or admission number on the document submitted by the alien, but does not match other information contained in the submitted document;

(5) the document is suspected of being counterfeit or to have been altered;

(6) the document includes an alien registration number in the A60 000 000 series (not yet issued) or A80 000 000 series (illegal border crossing);

(7) the document is a fee receipt from INS for replacement of a lost, stolen or unreadable INS document;

(8) the document is one of the following:

(A) INS Form I–181b notification letter issued in connection with a memorandum of creation of record of permanent residence (INS Form I–181);

(B) an arrival/departure record (INS Form I–94); or

(C) a foreign passport stamped, "Processed for I–551, temporary evidence of lawful permanent residence" that INS issued over one year before the date of the application for program benefits.

(d) If verification through the SAVE system is not available, or if the documents presented do not on their face reasonably appear to be genuine or to relate to the individual presenting them, the government entity that originally issued the document shall be contacted for verification. With regard to naturalized citizens and derivative citizens presenting certificates of citizenship and aliens, the INS is the appropriate government entity to contact for verification. The Board shall request verification by the INS by filing INS Form G–845 with copies of the pertinent documents provided by the applicant with the local INS office. If the applicant has lost his or her original documents, or presents expired documents or is unable to present any documentation evidencing his or her immigration status, the applicant shall be referred to the local INS office to obtain documentation.

(e) If the INS advises that the applicant is a citizen or a nonimmigrant alien, has immigration status which makes him or her a qualified alien, or is an alien paroled into the United States under 8 U.S.C. section 1182(d)(5) for less than one year, the INS verification should be accepted. If the INS advises that it cannot verify that the applicant is a citizen or a nonimmigrant alien, has immigration status that makes him or her a qualified alien, or is an alien paroled into the United States under 8 U.S.C. section 1182(d)(5) for less than one year, benefits shall be denied and the applicant notified pursuant to the program's regular procedures of his or her rights to appeal the denial of benefits.

NOTE: Authority cited: Sections 13920, 13974 and 13974.1, Government Code; and Section 4906, Penal Code. Reference: 8 U.S.C. Sections 1621 and 1625.

HISTORY

1. New section filed 3–24–98 as an emergency; operative 3–24–98 (Register 98, No. 13). A Certificate of Compliance must be transmitted to OAL by 7–22–98 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 7–21–98 as an emergency; operative 7–21–98 (Register 98, No. 30). A Certificate of Compliance must be transmitted to OAL by 11–18–98 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 7–21–98 order, including amendment of NOTE, transmitted to OAL 11–10–98 and filed 12–28–98 (Register 99, No. 1).

§ 628.6. Manual Verification of Immigration Status.

(a) If the documents presented do not on their face appear to be genuine or to relate to the individual presenting them, the government entity that originally issued the documents shall be contacted for verification. With regard to naturalized citizens and derivative citizens presenting certificates of citizenship and aliens, the INS is the appropriate government entity to contact for verification. The Board shall request verification from the INS by filing INS Form G–845 with copies of the pertinent documents provided by the applicant with the local INS office. If the applicant has lost his or her original documents, or presents expired documents, or is unable to present any documentation evidencing his or her immigration status, the applicant shall be referred to the local INS office to obtain documentation.

(b) The type of documentation referred to the INS for verification pursuant to INS Form G–845 shall include the following:

(1) a document that indicates immigration status but does not include an alien registration or alien admission number;

(2) a document that is suspected to be counterfeit or to have been altered;

(3) a document that includes an alien registration number in the A60 000 000 (not yet issued) or A80 000 000 (illegal border crossing) series;

(4) a document that is one of the following:

(A) an INS Form I–181b notification letter issued in connection with an INS Form I–181 Memorandum of Creation of Record of Permanent Residence;

(B) an Arrival–Departure Record (INS Form I–94); or

(C) a foreign passport stamped "Processed for I–551, Temporary Evidence of Lawful Permanent Residence" that INS issued more than one year before the date of application for program benefits.

(c) If the INS advises that the applicant is a citizen or a nonimmigrant alien, has an immigration status which makes him or her a qualified alien, or is an alien paroled into the United States under 8 U.S.C. section 1182(d)(5) for less than one year, the INS verification should be accepted. If the INS advises that it cannot verify that the applicant is a citizen or a nonimmigrant alien, has immigration status that makes him or her a qualified alien, or is an alien paroled into the United States under 8 U.S.C. section 1182(d)(5) for less than one year, benefits shall be denied and the applicant notified pursuant to the program's regular procedures of his or her rights to appeal the denial of benefits.

NOTE: Authority cited: Sections 13920, 13974 and 13974.1, Government Code; and Section 4906, Penal Code. Reference: 8 U.S.C. Sections 1621 and 1625.

HISTORY

1. New section filed 3–24–98 as an emergency; operative 3–24–98 (Register 98, No. 13). A Certificate of Compliance must be transmitted to OAL by 7–22–98 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 7–21–98 as an emergency; operative 7–21–98 (Register 98, No. 30). A Certificate of Compliance must be transmitted to OAL by 11–18–98 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 7–21–98 order, including amendment of NOTE, transmitted to OAL 11–10–98 and filed 12–28–98 (Register 99, No. 1).

§ 628.7. Eligibility Pending Verification of Status.

NOTE: Authority cited: Sections 13920 and 13974, Government Code; Section 25381, Health and Safety Code; and Section 4906, Penal Code. Reference: Section 25373, Health and Safety Code; and Sections 4900–4901, Penal Code; and 8 U.S.C. Section 1621.

HISTORY

1. New section filed 3–24–98 as an emergency; operative 3–24–98 (Register 98, No. 13). A Certificate of Compliance must be transmitted to OAL by 7–22–98 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 7–21–98 as an emergency; operative 7–21–98 (Register 98, No. 30). A Certificate of Compliance must be transmitted to OAL by 11–18–98 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 7–21–98 order, including repealer of section, transmitted to OAL 11–10–98 and filed 12–28–98 (Register 99, No. 1).

Subarticle 3. Hearings

§ 629.1. Right to Hearing.

(a) An applicant whose application is denied under sections 628.5(e) or 628.6(c) may request a hearing.

(b) A request for a hearing must be received by the Board within 45 days of the date the Board mailed the notification of the denial of the application.

NOTE: Authority cited: Sections 13920, 13974 and 13974.1, Government Code; and Section 4906, Penal Code. Reference: Sections 13973 and 13974.1, Government Code; and Section 4902, Penal Code.

HISTORY

1. New subarticle 3 (sections 629.1–629.2) and section filed 3–24–98 as an emergency; operative 3–24–98 (Register 98, No. 13). A Certificate of Compliance must be transmitted to OAL by 7–22–98 or emergency language will be repealed by operation of law on the following day.
2. New subarticle 3 (sections 629.1–629.2) and section refiled 7–21–98 as an emergency; operative 7–21–98 (Register 98, No. 30). A Certificate of Compliance must be transmitted to OAL by 11–18–98 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 7–21–98 order, including amendment of subsection (a) and NOTE, transmitted to OAL 11–10–98 and filed 12–28–98 (Register 99, No. 1).

§ 629.2. Conduct of Hearing.

(a) The applicant shall have the burden of proof.

(b) The standard of proof is by a preponderance of the evidence.

NOTE: Authority cited: Sections 13920, 13974 and 13974.1, Government Code; and Section 4906, Penal Code. Reference: Sections 13973 and 13974.1, Government Code; and Section 4902, Penal Code.

HISTORY

1. New section, form and Lists A and B filed 3–24–98 as an emergency; operative 3–24–98 (Register 98, No. 13). A Certificate of Compliance must be transmitted to OAL by 7–22–98 or emergency language will be repealed by operation of law on the following day.
2. New section, form and Lists A and B refiled 7–21–98 as an emergency; operative 7–21–98 (Register 98, No. 30). A Certificate of Compliance must be transmitted to OAL by 11–18–98 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 7–21–98 order, including amendment of NOTE, transmitted to OAL 11–10–98 and filed 12–28–98 (Register 99, No. 1).

STATE OF CALIFORNIA STATE BOARD OF CONTROL

STATEMENT OF CITIZENSHIP, ALIENAGE, AND IMMIGRATION STATUS FOR STATE PUBLIC BENEFITS

SBOC-EO-0107 (New 3/98)

SUBMIT COMPLETED FORM TO: STATE BOARD OF CONTROL
P.O. BOX
SACRAMENTO, CA 95812–

FOR BOARD OF CONTROL USE ONLY

- ☐ Hazardous Materials Claim
- ☐ Erroneously Convicted Felon Claim
- ☐ Good Samaritan Claim
- ☐ Missing Children Claim

CLAIM NO. _____

NAME OF APPLICANT	DATE
NAME OF PERSON ACTING ON BEHALF OF APPLICANT, IF APPLICABLE	RELATIONSHIP TO APPLICANT

STATE PUBLIC BENEFITS TO CITIZENS AND ALIENS

- Citizens and nationals of the United States who meet all eligibility requirements may receive Board of Control program benefits and must complete ***SECTIONS A and D*** of this form.
- Aliens who meet all eligibility requirements may also receive Board of Control program benefits and must complete ***SECTIONS A, B, C (IF APPLICABLE)***, and ***D*** of this form.

SECTION A: CITIZENSHIP/IMMIGRATION STATUS DECLARATION

IS APPLICANT A CITIZEN OR NATIONAL OF THE UNITED STATES?	IF YES, INDICATE CITY AND STATE WHERE APPLICANT WAS BORN
☐ YES ☐ NO	

IF YOU ARE A CITIZEN OR NATIONAL OF THE UNITED STATES, GO DIRECTLY TO SECTION D. IF YOU ARE AN ALIEN, PLEASE ALSO COMPLETE SECTION B, AND IF NECESSARY, SECTION C.

SECTION B: ALIEN STATUS DECLARATION

IMPORTANT: Please indicate the applicant's alien status below, and submit documents evidencing such status. The alien status documents listed for each category are the most commonly used documents that the United States Immigration and Naturalization Service (INS) provides to aliens in those categories. However, you may provide other acceptable evidence of your alien status even if not listed below.

1. An alien lawfully admitted for permanent residence under the Immigration and Naturalization Act (INA). ☐
   Evidence includes:
   - INS Form 1–551 (Alien Registration Receipt Card, commonly known as a "green card"); or
   - Unexpired Temporary 1–551 stamp in foreign passport or on INS Form 1–94.
2. An alien who is granted asylum under Section 208 of the INA. ☐
   Evidence includes:
   - INS Form 1–94 with stamp showing grant of asylum under Section 208 of the INA;
   - INS Form 1–688B (Employment Authorization Card) annotated "274a. 12(a)(5)";
   - INS Form 1–766 (Employment Authorization Document) annotated "A5";
   - Grant letter from the Asylum Office of INS; or
   - Order of an immigration judge granting asylum.
3. A refugee admitted to the United States under Section 207 of the INA. ☐
   Evidence includes:
   - INS Form 1–94 with stamp showing admission under Section 207 of the INA;
   - INS Form 1–688B (Employment Authorization Card) annotated "274a. 12(a)(3)";
   - INS Form 1–766 (Employment Authorization Document) annotated "A3"; or
   - INS Form 1–571 (Refugee Travel Document).
4. An alien paroled into the United States for at least one year under Section 212(d)(5) of the INA. ☐
   Evidence includes:
   - INS Form 1–94 with stamp showing admission for at least one year under Section 212(d)(5) of the INA. (Applicant cannot aggregate periods of admission for less than one year to meet the one–year requirement.)

(Continue on Reverse)

STATE OF CALIFORNIA STATE BOARD OF CONTROL

STATEMENT OF CITIZENSHIP, ALIENAGE, AND IMMIGRATION STATUS FOR STATE PUBLIC BENEFITS

SBOC–EO–0107 (New 3/98) *(Reverse)*

5. An alien whose deportation is being withheld under Section 243(h) of the INA (as in effect immediately prior to September 30, 1996) or Section 241(b)(3) of such Act (as amended by section 305(a) of Division C of Public Law 104–208. ☐
   Evidence includes:
   - INS Form I–688B (Employment Authorization Card) annotated "274a. 12(a)(10)";
   - INS Form I–766 (Employment Authorization Document) annotated "A10"; or
   - Order from an immigration judge showing deportation withheld under Section 243(h) of the INA as in effect prior to April 1, 1997, or removal withheld under Section 241(b)(3) of the INA.
6. An alien who is granted conditional entry under Section 203(a)(7) of the INA as in effect prior to April 1, 1980. ☐
   Evidence includes:
   - INS Form I–94 with stamp showing admission under Section 203(a)(7) of the INA;
   - INS Form I–688B (Employment Authorization Card) annotated "274a. 12(a)(3)"; or
   - INS Form I–766 (Employment Authorization Document) annotated "A3".
7. An alien who is a Cuban or Haitian entrant (as defined in Section 501(e) of the Refugee Education Assistance Act of 1980). ☐
   Evidence includes:
   - INS Form I–551 (Alien Registration Receipt Card, commonly known as a "green card") with the code CU6, CU7, or CH6;
   - Unexpired temporary I–551 stamp in foreign passport or on INS Form I–94 with the code CU6 or CU7; or
   - INS Form I–94 with stamp showing parole as "Cuban/Haitian Entrant" under Section 212(d)(5) of the INA.
8. An alien paroled into the United States for less than one year under Section 212(d)(5) of the INA. ☐
   Evidence includes:
   - INS Form I–94 showing this status.
9. An alien not in categories 1 through 8 who has been admitted to the United States for a limited period of time (a non–immigrant). Non–immigrants are persons who have temporary status for a specific purpose. ☐
   Evidence includes:
   - INS Form I–94 showing this status.

SECTION C: DECLARATION FOR BATTERED ALIENS

IMPORTANT: Complete this section if the applicant, the child of the applicant, or the parent of the child applicant has been battered or subjected to extreme cruelty in the United States.

1. Has the INS or the EOIR granted a petition or application filed by or on behalf of the applicant, the child of the applicant, or the parent of the child applicant under the INA or found that a pending petition sets forth a prima facie case?
   Evidence includes:
   - One of the documents on List B (attached).

   ☐ YES ☐ NO

2. Has the applicant, the child of the applicant, or the parent of the child applicant been battered or subjected to extreme cruelty in the United States by a spouse or parent, or by a spouse's or parent's family member living in the same house, where the spouse or parent consented to, or acquiesced in the battery or cruelty?

   ☐ YES ☐ NO

SECTION D: DECLARATION OF APPLICANT

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THE ANSWERS I HAVE GIVEN ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

SIGNATURE OF APPLICANT	DATE
SIGNATURE OF PERSON ACTING ON BEHALF OF APPLICANT	DATE

LIST A

A person who is a citizen or national of the United States.

A. Primary Evidence

- A birth certificate showing birth in one of the 50 states, the District of Columbia, Puerto Rico (on or after January 13, 1941), Guam, the U.S. Virgin Islands (on or after January 17, 1917), American Samoa, Swain's Island or the Northern Mariana Islands, unless the person was born to foreign diplomats residing in the United States. If applicant was born in Puerto Rico, the U.S. Virgin Islands or the Northern Mariana Islands before these areas became part of the U.S., the applicant may be a collectively naturalized citizen—see Paragraph C below;
- United States passport (except limited passports, which are issued for periods of less than five years);
- Report of birth abroad of a U.S. citizen (FS–240) issued by the Department of State to U.S. citizens;
- Certificate of Birth (FS–545) issued by a foreign service post or Certification of Report of Birth (DS–1350) issued by the Department of State, copies of which are available from the Department of State;
- Certificate of Naturalization (N–550 or N–570) issued by the INS through a Federal or State court, or through administrative naturalization after December 1990 to individuals who are individually naturalized; the N–570 is a replacement certificate issued when the N–550 has been lost or mutilated or the individual's name has been changed;
- Certificate of Citizenship (N–560 or N–561) issued by the INS to individuals who derive U.S. citizenship through a parent; the N–561 is a replacement certificate issued when the N–560 has been lost or mutilated or the individual's name has been changed;
- United States Citizen Identification Card (I–197) issued by the INS until April 7, 1983, to U.S. citizens living near the Canadian or Mexican border who needed it for frequent border crossings (formerly Form I–179, last issued in February 1974);
- Northern Mariana Identification Card issued by the INS to a collectively naturalized citizen of the U.S. who was born in the Northern Mariana Islands before November 3, 1986;
- Statement provided by a U.S. consular officer certifying that the individual is a U.S. citizen (this is given to an individual born outside the U. S. who derives citizenship through a parent but does not have an FS–240, FS–545 or DS–1350); or
- American Indian Card with a classification code "KIC" and a statement on the back (identifying U.S. citizen members of the Texas Band of Kickapoos living near the U.S./Mexican border).

B. Secondary Evidence

If the applicant cannot present one of the documents listed in A above, the following may be relied upon to establish U.S. citizenship or nationality:

- Religious record recorded in one of the 50 states, the District of Columbia, Puerto Rico (on or after January 13, 1941), Guam, the U.S. Virgin Islands (on or after January 17, 1917); American Samoa, Swain's Island or the Northern Mariana Islands (unless the person was born to foreign diplomats residing in such a jurisdiction) within three months after birth showing that the birth occurred in such jurisdiction and the date of birth or the individual's age at the time the record was made;
- Evidence of civil service employment by the U.S. government before June 1, 1976;
- Early school records (preferably from the first school) showing the date of admission to the school, the child's date and place of birth, and the name(s) and place(s) of birth of the parent(s);
- *Census record showing name, U.S. citizenship* or a U.S. place of birth, and date of birth or age of applicant;
- Adoption Finalization Papers showing the child's name and place of birth in one of the 50 States, the District of Columbia, Puerto Rico (on or after January 13, 1941), Guam, the U.S. Virgin Islands (on or after January 17, 1917), American Samoa, Swain's Island or the Northern Mariana Islands (Unless the person was born to foreign diplomats residing in such a jurisdiction) or, where adoption is not finalized and the state or other jurisdiction listed above in which the child was born will not release a birth certificate prior to final adoption, a statement from a state–approved adoption agency showing the child's name and place of birth in one such jurisdiction (NOTE: the source of the information must be an original birth certificate and must be indicated in the statement); or
- Any other document that establishes a U.S. place of birth or in some way indicates U.S. citizenship (e.g., a contemporaneous hospital record of birth in that hospital in one of the 50 states, the District of Columbia, Puerto Rico (on or after January 13, 1941), Guam, the U.S. Virgin Islands (on or after January 17, 1917), American Samoa, Swain's Island or the Northern Mariana Islands, (unless the person was born to foreign diplomats residing in such a jurisdiction).

C. Collective Naturalization

If the applicant cannot present one of the documents listed in A or B above, the following will establish U.S. citizenship for collectively naturalized individuals:

Puerto Rico:

- Evidence of birth in Puerto Rico on or after April 11, 1899 and the applicant's statement that he or she was residing in the U.S., a U.S. possession or Puerto Rico on January 13, 1941; or
- Evidence that the applicant was a Puerto Rican citizen and the applicant's statement that he or she was residing in Puerto Rico on March 1, 1917 and that he or she did not take an oath of allegiance to Spain.

U.S. Virgin Islands:

- Evidence of birth in the U.S. Virgin Islands, and the applicant's statement of residence in the U.S., a U.S. possession or the U. S. Virgin Islands on February 25, 1927;
- The applicant's statement indicating residence in the U.S. Virgin Islands as a Danish citizen on January 17, 1917 and residence in the U.S., a U.S. possession or the U.S. Virgin Islands on February 25, 1927 and that he or she did not make a declaration to maintain Danish citizenship; or
- Evidence of birth in the U.S. Virgin Islands and the applicant's statement indicating residence in the U.S., a U.S. possession or territory or the Canal Zone on June 28, 1932.

Northern Mariana Islands (NMI) (formerly part of the Trust Territory of the Pacific Islands (TTPI)):

- Evidence of birth in the NMI, TTPI citizenship and residence in the NMI, the U.S., or a U.S. territory or possession on November 3, 1986 (NMI local time) and the applicant's statement that he or she did not owe allegiance to a foreign state on November 4, 1986 (NMI local time);
- Evidence of TTPI citizenship, continuous residence in the NMI prior to November 3, 1981 (NMI local time), voter registration to January 1, 1975 and the applicant's statement that he or she did not owe allegiance to a foreign state on November 4, 1986 (NMI local time); or
- Evidence of continuous domicile in the NMI prior to January 1, 1974 and the applicant's statement that he or she did not owe allegiance to a foreign state on November 4, 1986 (NMI local time). Note: If a person entered the NMI as a nonimmigrant and lived in the NMI since January 1, 1974, this does not constitute continuous domicile and the individual is not a U.S. citizen.

D. Derivative Citizenship

If the applicant cannot present one of the documents listed in A or B above, you may have derivative U.S. citizenship in the following situations:

Applicant born abroad to two U.S. citizen parents:

- Evidence of the U.S. citizenship of the parents and the relationship of the applicant to the parents, and evidence that at least one parent resided in the U.S. or an outlying possession prior to the applicant's birth.

Applicant born abroad to a U.S. citizen parent and a U.S. non–citizen national parent:

- Evidence that one parent is a U.S. citizen and that the other is a U.S. non–citizen national, evidence of the relationship of the applicant to the U. S. citizen parent, and evidence that the U.S. Citizen parent resided in the U.S., a U.S. possession, American Samoa or Swain's Island for a period of at least one year prior to the applicant's birth.

Applicant born out of wedlock abroad to a U.S. citizen mother:

- Evidence of the U.S. citizenship of the mother, evidence of the relationship to the applicant and, for births on or before December 24, 1952, evidence that the mother resided in the U.S. prior to the applicant's birth or, for births after December 24, 1952, evidence that the mother had resided, prior to the child's birth, in the U.S. or a U.S. possession for period of one year.

Applicant born in the Canal Zone or the Republic of Panama:

- A birth certificate showing birth in the Canal Zone on or after February 26, 1904 and before October 1, 1979 and evidence that one parent was a U.S. citizen at the time of the applicant's birth; or
- A birth certificate showing birth in the Republic of Panama on or after February 26, 1904 and before October 1, 1979 and evidence that at least one parent was a U.S. citizen and employed by the U.S. government or the Panama Railroad Company or its successor in title.

All other situations where an applicant claims to have a U.S. citizen parent and an alien parent, or claims to fall within one of the above categories but is unable to present the listed documentation:

- If the applicant is in the U.S., contact the local INS office for determination of U.S. citizenship;
- If the applicant is outside the U.S., contact the State Department for a U.S. citizenship determination.

E. Adoption of Foreign–Born Child by U.S. Citizen

- If the birth certificate shows a foreign place of birth and the applicant cannot be determined to be a naturalized citizen under any of the above criteria, you must obtain other evidence of U.S. citizenship;
- Since foreign–born adopted children do not automatically acquire U.S. citizenship by virtue of adoption by U.S. citizens, contact the local INS district office for a determination of U.S. citizenship if the applicant has no evidence of U.S. citizenship.

F. U.S. Citizenship By Marriage

- If a woman acquired U.S. citizenship through marriage to a U.S. citizen before September 22, 1922, submit evidence of U.S. citizenship of the husband and evidence showing the marriage occurred before September 22, 1922.

  Note: If the husband was an alien at the time of the marriage and became naturalized before September 22, 1922, the wife also acquired naturalized citizenship. If the marriage terminated, the wife maintained her U.S. citizenship if she was residing in the U.S. at that time and continued to reside in the U.S.

LIST B

A. Documentation Evidencing an Appproved Petition or Application

- INS Form I–551 ("Resident Alien Card" or "Alien Registration Receipt Card", commonly known as a "green card") with one of the following INS class of admission ("COA") codes printed on the front of a white card or the back of a pink card: AR1, AR6, C20 through C29, CF1, CF2, CR1, CR2, CR6, CR7, CX1 through CX3, CX6 through CX8, F20 through F29, FX1 through FX3, FX6 through FX8, IF1, IF2, IR1 through IR4, IR6 through IR9, IW1, IW2, IW6, IW7, MR6, MR7, P21 through P23, or P26 through P28.

  If an alien claiming approved status presents a code different than those enumerated, or if you cannot determine the class of admission from the I–551 stamp, Board of Control staff will file INS Form G–845 and the G–845 Supplement (mark item six on the Supplement), along with a copy of the document(s) presented, with the local INS office in order to determine whether the applicant gained his or her status because he or she was the spouse, widow, or child of a U.S. citizen or the spouse, child, or unmarried son or daughter of lawful permanent resident.
- INS Form I–551 with one of the following COA codes stamped on the lower left side of the back of a pink card: IB1 through IB3, IB6 through IB8, B11, B12, B16, B17, B20 through B29, B31 through B33, B36 through B38, BX1 through BX3, or BX6 through BX8.
- INS Form I–551 with COA code Z13.
- Unexpired Temporary I–551 stamp in foreign passport or on INS Form I–94 with one of the COA codes specified in the Subsections (1)–(3), above.
- INS Form I–797 indicating approval of an INS I–130 petition (only I–130 petitions describing the following relationships may be accepted: husbands or wives of U.S. citizens or LPRs, unmarried children under 21 years old of U.S. citizens or LPRs, or unmarried children 21 or older of LPRs), or approval of an I–360 petition (only I–360 approvals based on status as a widow/widower of a U.S. citizen or as a self–petitioning spouse or child of an abusive U.S. citizen or LPR may be accepted).
- A final order of an Immigration Judge or the Board of Immigration Appeals granting suspension of deportation under Section 244(a)(3) of the INA as in effect prior to April 1, 1997, or cancellation of removal under Section 240A(b)(2) of the INA.

B. Documentation Demonstrating that the Applicant has Established a Prima Facie Case

- INS Form I–797 indicating that the applicant has established a prima facie case; or
- An immigration court or Board of Immigration Appeals order indicating that the applicant has established a prima facie case for suspension of deportation under INA Section 244(a)(3) as in effect prior to April 1, 1997, or cancellation of removal under section 240A(b)(2) of the INA.

C. Documentation Indicating That the Applicant has Filed a Petition or That a Petition Has Been Filed on the Applicant's Behalf, as Applicable, but with no Evidence of Approval of the Petition or Establishment of a Prima Facie Case

Board of Control staff will determine from the documentation when the petition was filed and take the actions set forth below:

- Applicants with petitions filed before June 7, 1997 should have an INS Form I–797 indicating filing of the I–360 petition by "self–petitioning spouse [or child] of abusive U.S. citizen or LPR," or a file–stamped copy of the petition, or another document demonstrating filing (including a cash register or computer–generated receipt indicating filing of Form I–360).
- Applicants with petitions filed after June 7, 1997, should have an INS Form I–797 indicating filing of the I–360 petition.

D. Documentation Indicating that the Applicant Has Filed a Petition or That a Petition Was Filed on His or Her Behalf, as Applicable

The following must indicate that the applicant is the widow/widower of a U.S. citizen, the husband or wife of a U.S. citizen or LPR, the unmarried child under age 21 of a U.S. citizen or LPR, or the unmarried child age 21 or older of an LPR):

- For aliens on whose behalf a petition has been filed: INS Form I–797 indicating filing of an INS I–130 petition, a file–stamped copy of the petition, or another document demonstrating filing (including a cash register or computer–generated receipt indicating filing of Form I–130).
- For self–petitioning widows or widowers: a file–stamped copy of the INS I–360 petition, or another document demonstrating filing (including a cash register or computer–generated receipt indicating filing of Form I–360).

E. Documentation Indicating That the INS Has Initiated Deportation or Removal Proceeding in Which Relief May Be Available.

- an "Order to Show Cause"
- a "Notice to Appear"; or
- a "Notice of Hearing in Deportation Proceedings".

F. Minimal or No Documentation Regarding the Claimed Filing

If the applicant has some documentation, but it is insufficient to demonstrate filing, establishment of pirma facie case, or approval of a petition, Board of Control staff will fax the INS Request Form as well as a copy of any document(s) provided by the applicant, to the INS Vermont Service Center in order to determine the applicant's status. If the applicant has no documentation but is certain that a petition has been filed by his or her spouse or parent, Board of Control staff will fax the INS Request Form to the INS Vermont Service Center.

Article 4. Presentation of Claims to the State Board of Control

§ 630. Presentation of Claims.

There shall be presented to the Board of Control all claims for money or damages against the State:

(a) For which an appropriation has been made or for which a State fund is available and which have been rejected by the Controller.

(b) For which the appropriation made or fund designated is exhausted.

(c) For which no appropriation has been made or for which no fund is available but the settlement of which has been provided for by statute or constitutional provision.

(d) For which settlement is not otherwise provided for by statute or constitutional provision.

(e) On express contract.

(f) For the taking or damaging of private property for public use within the meaning of Section 19 of Article I of the Constitution.

(g) Based upon the negligent act or omission of a state officer, servant or employee or for the dangerous condition of state property.

(h) For any other injury for which the State is liable.

NOTE: Authority cited: Sections 13920 and 13921, Government Code.

HISTORY

1. Repealer of Article 4 (Sections 630–634) and new Article 4 (Sections 631–632, 632.5–632.11) filed 9–19–63 as an emergency; designated effective 9–20–63 (Register 63, No. 16). For history of former sections in Article 4, see Register 62, No. 22.
2. Certificate of Compliance filed 12–19–63 (Register 63, No. 25).
3. Amendment of subsection (f) filed 2–25–77; effective thirtieth day thereafter (Register 77, No. 9).

§ 631. Contents of Claims.

All claims or amendments thereto shall be filed in triplicate, shall be signed by the claimant or by a person acting on his behalf, shall be verified, and shall state the facts constituting the claim in simple concise language without resort to legal phraseology.

§ 632. Form of Claims.

All claims or amendments filed with the State Board of Control based upon subsections (a) through (f) of Section 630 shall be in substantially the following form:

Reserve for
Filing Stamp
Claim No.

BEFORE THE BOARD OF CONTROL OF THE STATE OF CALIFORNIA

In the Matter of the Claim of _____,
against the State of California.

The undersigned claimant hereby makes claim against the State of California in the sum of_____ dollars, and in support of said claim represents as follows:

1. (State the class ("a" through "f") mentioned in Section 630 in which the claim belongs.)

2. (State the date, place and other circumstances of the occurrences or transactions which gave rise to the claim.)

3. (Give a general description of the indebtedness, obligation, injury, damage or loss incurred so far as known.)

4. (Show how the amount claimed above was computed, including the estimated amount of any prospective injury or damage.)

5. (Cite the status, if any, making the appropriation or providing for the settlement of the claim or designating the fund involved.)

_____
Claimant

_____
Address

Dated: _____
Send notices to:
_____
_____
(Claim to be filed in triplicate)

STATE OF CALIFORNIA,
County of _____ } ss.

_____, being by me first duly sworn, deposes and says: That he is the claimant above named, that he has read the foregoing claim and knows the contents thereof, that the same is true of his own knowledge except as to those matters therein stated on information and belief, and as to those matters that he believes it to be true.

_____
Claimant's Signature

Subscribed and sworn to before me this
_____ day of _____, 19____.

_____
Notary Public in and for the County of _____, State of California.

FOLLOWING FORM OF VERIFICATION TO BE USED IF CLAIMANT IS A CORPORATION

STATE OF CALIFORNIA,
County of _____ } ss.

_____, being by me first duly sworn, deposes and says: That he is the_____of _____, a corporation, the claimant herein, that he has read the foregoing claim and knows the contents thereof, that the same is true of his own knowledge except as to those matters therein stated on information and belief, and as to those matters that he believes it to be true.

_____
Claimant's Signature

Subscribed and sworn to before me this
_____ day of _____, 19____.

_____
Notary Public in and for the County of _____, State of California.

NOTICE

Section 72 of the Penal Code provides:

"Every person who, with intent to defraud, presents for allowance or for payment to any state board or officer, or to any country, town, city, district, ward or village board or officer, authorized to allow or pay the same if genuine, any false or fraudulent claim, bill, account, voucher, or writing, is guilty of a felony."

§ 632.5. Form of Claims Involving Negligence, or the Dangerous Condition of State Property, or Other Injuries for Which the State Is Liable.

All claims or amendments filed with the State Board of Control based upon subsections (g) or (h) of Section 630 shall be in substantially the following form:

Reserve for Filing Stamp
Claim No. _____

In the Matter of the Claim of _____, against the State of California.

The undersigned claimant hereby makes claim against the State of California in the sum of $_____ and in support of said claim represents as follows:

1. When did damage or injury occur? (Give exact date and hour.)
2. Where did the damage or injury occur?
3. How did the damage or injury occur? (Give full details.)
4. What particular act or omission on the part of state officers, servants or employees caused the injury or damage?
5. What are the names of the state officers, servants or employees causing the damage or injury?
6. What damage or injuries do you claim resulted? (Give full extent of injuries or damages claimed.)
7. How was the amount claimed above computed? (Include the estimated amount of any prospective injury or damage.)
Name and address of witnesses, doctors and hospitals:
Expenditures made on account of accident or injury:

Date:	Item:	Amount
_____	_____	$_____
_____	_____	$_____

_____
Claimant

_____
Address

Send Notices to:

_____
_____

(Claim to be filed in triplicate)

STATE OF CALIFORNIA, County of _____ ss.

_____, being by me first duly sworn, deposes and says: That he is the claimant above named, that he has read the foregoing claim and knows the contents thereof, that the same is true of his own knowledge except as to those matters therein stated on information and belief, and as to those matters that he believes it to be true.

_____
Claimant's Signature

Subscribed and sworn to before me this _____ day of _____, 19____.

_____
Notary Public in and for the County of _____, State of California.

FOLLOWING FORM OF VERIFICATION TO BE USED IF CLAIMANT IS A CORPORATION

STATE OF CALIFORNIA, County of _____ } ss.

_____, being by me first duly sworn, deposes and says: That he is the_____of _____, a corporation, the claimant herein, that he has read the foregoing claim and knows the contents thereof, that the same is true of his own knowledge except as to those matters therein stated on information and belief, and as to those matters that he believes it to be true.

_____
Claimant's Signature

Subscribed and sworn to before me this _____ day of _____, 19____.

_____
Notary Public in and for the County of _____, State of California.

NOTICE

Section 72 of the Penal Code provides:

"Every person who, with intent to defraud, presents for allowance or for payment to any state board or officer, or to any country, town, city, district, ward or village board or officer, authorized to allow or pay the same if genuine, any false or fraudulent claim, bill, account, voucher, or writing, is guilty of a felony."

§ 632.6. Notice of Insufficiency.

The Attorney General or other attorney authorized to represent the State is designated to given written notice of insufficiency of any claim within the time and in the manner prescribed by Government Code Section 910.8. A copy of such notice shall be forwarded to the State Board of Control and no action will be taken by the Board on the claim for a period of 15 days after such notice is given.

§ 632.7. Time for Presenting Claim.

A claim relating to a cause of action for death or for injury to person or to personal property or growing crops shall be presented to the Board of Control not later than the 100th day after the accrual of the cause of action. A claim relating to any other cause of action shall be presented to the Board of Control not later than one year after the accrual of the cause of action.

NOTE: Additional authority cited: Section 911.2, Government Code.

HISTORY

1. New NOTE filed 2–25–77; effective thirtieth day thereafter (Register 77, No. 9).

§ 632.8. Presenting Late Claim.

(a) When due to mistake, inadvertence, surprise or excusable neglect, a claim required under Section 632.7 to be filed within 100 days after the accrual of a cause of action is not filed within such 100 day period, the claimant may present a written application to the Board for leave to present such claim. Such application must be presented within a reasonable time not to exceed one year after the accrual of the cause of action and shall state fully the reason for the delay in presenting the claim. The proposed claim shall be attached to the application and shall in form comply with these rules.

(b) Such application shall be granted or denied by the Board of Control within 45 days after its presentation to the Board.

(c) Automatic Rejection. If the application is not acted on by the Board within the time prescribed in this section, the application will be deemed rejected by the Board on the last day of the period within which Board is required to act on the application.

(d) Extension of Time. By written agreement, the applicant and the Attorney General or other attorney authorized to represent the State may extend the period within which the State Board of Control is required to act on the application.

(e) When an application for leave to file a late claim is presented to the State Board of Control pursuant to Government Code Section 911.4, the Secretary of the Board shall furnish the Attorney General or other attorney authorized to represent the State with a copy of such application and the Attorney General or other attorney authorized to represent the State may present affidavits of other evidence in opposition to the application.

(f) In reviewing the application, the Board shall consider whether the State has been prejudiced by the failure to present the claim within the time required by these rules. If the application is granted, the claim shall be deemed to have been presented to the Board upon the day that leave to present the claim was granted.

NOTE: Authority cited: Sections 911.4 and 911.6, Government Code. Reference: Section 11421, Government Code.

HISTORY

1. New NOTE filed 2–25–77; effective thirtieth day thereafter (Register 77, No. 9).
2. Amendment filed 3–12–79 as an emergency; effective upon filing (Register 79, No. 11).
3. Certificate of Compliance filed 5–25–79 (Register 79, No. 21).
4. Amendment filed 5–30–80; designated effective 7–1–80 (Register 80, No. 22).

§ 632.9. Notice and Hearing.

(a) At least 10 days prior to the date set for final action by the State Board of Control, written notice of the time and place of hearing by the State Board of Control of the claim, amendment or application to file a late claim, unless waived by claimant, shall be mailed by the Board to the address, if any, stated in the claim as the address to which the person presenting the claim desires notice to be sent. If no such address is stated in the claim, the notice may be mailed to the address, if any, of the claimant as stated in the claim. No notice will be given when the claim fails to state either an address to which the person presenting the claim desires notices to be sent or an address of the claimant.

(b) At the hearing, and in the discretion of the Board, oral testimony and written instruments may be introduced without regard to the legal rules of evidence.

(c) In reaching their decision, and when reporting to the Legislature concerning the claim, the members of the Board may state and use any official or personal knowledge they may have touching the claim.

(d) If the Board approves or recommends a claim, and no sufficient appropriation for payment thereof is available, the Board, with the approval of the Governor, shall report to the Legislature such facts and recommendations concerning the claim as it deems proper.

(e) Upon the allowance by the Board of all or part of a claim for which a sufficient appropriation exists, and the execution and presentation of such documents as the Board may require which discharge the State, its officers, agents, servants and employees, of all liability under the claim,

the Board shall designate the fund from which the claim is to be paid and the State agency concerned shall pay the claim from such fund.

NOTE: Additional authority cited: Section 915.4, Government Code.

HISTORY

1. New NOTE filed 2–25–77; effective thirtieth day thereafter (Register 77, No. 9).

§ 632.10. Board Action on Claims.

(a) The Board of Control shall act on a claim presented in accordance with the rules within 45 days after the claim has been presented or, if the claim is amended, within 45 days after the amended claim is presented.

(b) Automatic Rejection. If the claim is not acted on by the Board within the time prescribed in this Section, the claim will be deemed rejected by the Board on the last day of the period within which the Board is required to act on the claim.

(c) Extension of Time. By written agreement, the claimant and Attorney General or other attorney authorized to represent the State may extend the period within which the State Board of Control is required to act on the claim. A copy of such written agreement shall be forwarded to the State board of Control by the Attorney General or other attorney authorized to represent the state.

NOTE: Additional authority cited: Section 911.6, Government Code.

HISTORY

1. New NOTE filed 2–25–77; effective thirtieth day thereafter (Register 77, No. 9)

§ 632.11. Settlement of Claims.

Where the claim is not covered by insurance the Attorney General on behalf of all state agencies, except the Department of Transportation, and the Director of the Department of Transportation on behalf of the Department of Transportation are authorized, subject to any instructions which may be issued by the Board from time to time, to investigate and recommend to the Board the disposition of all claims involving personal injury, wrongful death, and property damage.

The Attorney General on behalf of all state agencies except the Department of Transportation and the Director of the Department of Transportation are also authorized to adjust and pay all such claims where the settlement does not exceed one thousand dollars ($1,000) and where a sufficient appropriation exists, providing the Board is presented with a statement of the basis of the claim, the amount of the settlement, and the claimant's agreement therewith, and the Board approves such settlement.

Nothing contained herein shall preclude the Board from investigating a claim by assignment to the hearing officer or otherwise or from receiving recommendations from any other governmental agency.

HISTORY

1. Repealer and new section filed 8–19–64 as an emergency; designated effective 9–10–64 (Register 64, No. 18).
2. Certificate of Compliance filed 10–7–64 (Register 64, No. 20).
3. Amendment filed 2–25–77; effective thirtieth day thereafter (Register 77, No. 9).

Article 4.1. Payroll Claims

§ 633. Submission to State Personnel Board.

All payroll claims shall be forwarded to the State Personnel Board at Sacramento.

NOTE: Authority cited: Section 19761, Government Code.

HISTORY

1. Renumbering of former article 6 to article 4.1 (sections 633–633.9) and renumbering of former section 650 to section 633 filed 12–17–99; operative 12–17–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 51). For prior history, see Register 87, No. 44.

§ 633.1. Computing Salaries. Forwarding of Pay Roll Claims.

The State Controller shall not draw a warrant for payment of any claim for salaries and wages, other than statutory salaries, unless the State Personnel Board shall have certified that:

(a) All persons whose names appear upon such pay roll claims are holding positions as provided by the State Civil Service Act and the rules and regulations prescribed thereunder, and

(b) All items and amounts claimed thereon are in accordance with the current budgetary provisions as approved by the Department of Finance.

HISTORY

1. Renumbering of former section 651 to section 633.1 filed 12–17–99; operative 12–17–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 51). For prior history, see Register 87, No. 44.

§ 633.2. Monthly Salaries.

An employee whose salary is established on a monthly basis shall receive his monthly salary for any 21–day period in which he works 21 days or 168 hours, or for any 22–day pay period in which he works 22 days or 176 hours. For the purpose of computing the number of days or hours worked, time during which an employee is excused from working because of holidays, sick leave, vacation, compensating time off or other leave with pay shall be considered as time worked by the employee.

If an employee is required to work more than the normal amount of time in any pay period because his work schedule is other than five days a week, Monday through Friday, the extra time worked shall be credited the same as overtime. If such schedule requires him to work less than the normal amount of time, compensating time off shall be charged toward making up the deficiency.

An employee who is entitled to less than his full monthly salary for any pay period shall receive only that part of his monthly salary as the number of days he worked during the pay period bears to the total number of work days in the pay period.

HISTORY

1. Renumbering of former section 652 to section 633.2 filed 12–17–99; operative 12–17–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 51). For prior history, see Register 87, No. 44.

§ 633.3. Preparation of Pay Roll Claims.

The pay roll presented for audit shall show:

(a) Where employees are paid on a monthly basis, the name, position occupied, period for which payment is made and the rate of pay. For example: John Smith, Carpenter, November 1–20, inclusive, at $150—$100.

(b) Where employees are paid on a per diem basis, the name, position occupied, number of days employed, dates and rate per day.

(c) Where employees are paid on an hourly basis, the name, position occupied, number of hours employed each day, dates, total number of hours employed and rate per hour.

(d) Where employees of the state colleges are engaged as supervising teachers, demonstration school teachers, or in extension class or summer session instruction, the name, position occupied, number of units taught, and rate per unit shall be shown.

(e) Where the State Personnel Board, in fixing compensation in accordance with prevailing rates of wages in the locality under Government Code Section 18853, has authorized subsistence, travel, or other allowance in addition to daily or hourly rate of pay, the type, rate and duration of allowance, locations and travel involved, and any other information necessary to establish entitlement and conformity with the authorization of the Personnel Board.

HISTORY

1. Renumbering of former section 653 to section 633.3 filed 12–17–99; operative 12–17–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 51). For prior history, see Register 87, No. 44.

§ 633.4. Pay Roll Certificate.

(a) In accordance with Section 624, each pay roll claim shall contain a certificate reading as follows:

"I hereby certify under penalty of perjury:

"That I am the duly appointed, qualified and acting officer of the herein named state agency; that the within pay roll is correct; that the work for which payment is claimed was actually performed solely for the benefit of the State on the days and during the month specified; that the individuals whose names are set forth herein were employed in accordance with law to perform such services; that all the provisions of law govern-

ing such employment have been fully complied with; that each such individual is entitled to the amount set opposite his name, unless this is a claim for reimbursement of the departmental pay roll revolving fund, in which event each such individual was entitled to and has been paid the amount set opposite his name from such revolving fund; that all deductions made herein for purposes set forth in Sections 1156, 1156.1 and 13922, Government Code, are in conformity with written authorizations of the employees concerned on file in this office

"That the persons for whom payment is requested in this pay roll who have been appointed under emergency appointments or who hold positions excluded from the state civil service by Article XXIV of the State Constitution, have, in writing, declared themselves to be citizens of the United States.

"That the persons for whom payment is requested in this pay roll have taken, subscribed and filed the oaths, including the oath set forth in Section 3103 of the Government Code, required by law.

"That the totals of the schedules and of the within pay roll as presented are as set forth therein."

(b) Each such claim shall also contain the following approval by the State Personnel Board:

"The persons named in the within pay roll are holding positions as provided in Article XXIV of the State Constitution, Sections 18570 to 19765, inclusive, Government Code, and the rules and regulations prescribed thereunder. All items and amounts claimed on the within pay roll are in accordance with the current budgetary provisions as approved by the Department of Finance. All persons named in the payroll who hold positions within the state civil service have declared themselves, in writing, to be citizens of the United States.

"The within payroll is hereby approved for payment with exceptions, if any, as noted."

(c) Each such claim presented for reimbursement of the departmental pay roll revolving fund shall be marked "Pay Roll Revolving Fund."

NOTE: Additional authority cited: Section 13920.1, Government Code.

HISTORY

1. Renumbering of former section 654 to section 633.4 filed 12–17–99; operative 12–17–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 51). For prior history, see Register 87, No. 44.

§ 633.5. Salary Includes All Services. Acceptance of Fees by State Officers.

The salaries fixed by law for all state officers, elective or appointive, shall be compensation in full for all services rendered in any official capacity or employment whatsoever, during their terms of office, and no such officer shall receive for his own use any fee or perquisite for the performance of any official duty.

NOTE: Authority cited: Section 18000, Government Code.

HISTORY

1. Renumbering of former section 655 to section 633.5 filed 12–17–99; operative 12–17–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 51). For prior history, see Register 87, No. 44.

§ 633.6. Claims for Allowances Under Retirement System.

(a) In addition to the information required under Section 622, every claim for allowances under a retirement system shall show:

(1) The amount of the similar roll for the preceding period.

(2) All additions to and deletions from the roll for said preceding period, including adjustments, changes, and authorized deductions, together with the name of the respective payee affected by each thereof.

(3) The total amount of the roll, as thus adjusted.

(4) All entries shall be carried directly to the column showing the amount to be disbursed.

(b) In accordance with Section 624, each claim for payment of claims for allowances under a retirement system shall contain a certificate reading as follows:

"I hereby certify under penalty of perjury as follows:

"That I am the duly appointed, qualified and acting officer of the herein named retirement system. That the amount of the similar roll for the preceding period is truly and correctly set forth herein. That all proper additions to, and deletions from, said roll for the previous period (including all proper adjustments, changes, and deductions) are contained in the within schedules, and that the respective amounts and payees affected, and the totals, are true and correct as set forth herein. That retirement allowances and deductions therefrom are properly payable to each and all of the claimants as previously certified, as adjusted to and including the within schedules, and that such allowances (including amounts shown as deductions therefrom) are authorized in the amount, for the period, and to the respective payees, as indicated herein, under all laws and regulations governing the retirement system. That deductions for purposes set forth in Section 20135, Government Code are in conformity with written authorizations of the persons concerned. That I have not violated any of the provisions of Sections 1090 to 1096, inclusive, Government Code.

"That warrants drawn pursuant to this claim will be delivered to the respective claimants whose right to receive retirement allowances or deductions therefrom has been certified to the State Controller."

(c) Claims for allowances under a retirement system are excepted from the requirements of Sections 650 to 655, inclusive.

(d) At the option of the State Controller, any claim for allowances under a retirement system may be filed and audited in accordance with Board of Control rules applicable but for the adoption of this section.

HISTORY

1. Renumbering of former section 656 to section 633.6 filed 12–17–99; operative 12–17–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 51). For prior history, see Register 87, No. 44.

§ 633.7. Pay Roll Claims Under Central Disbursement System.

Upon determination by the State Controller of an effective date for any state agency in compliance with Section 12470 of the Government Code, such agency shall submit pay roll claims in the following form and manner, and the State Controller shall prepare and make direct payment of pay rolls for such state agency on the basis thereof.

(a) An original pay roll roster shall be presented at the outset, showing names, positions, rates of pay, and other pay roll information as prescribed by the State Controller, for all employees and approved established positions (filled and unfilled) of the agency. Every claim transmitting an original pay roll roster shall constitute a continuing claim for salary payments, subject to modification as in this section provided. In addition to the information required under Section 622 (excepting subsection (b) thereof), each claim transmitting an original pay roll roster shall contain a certificate in accordance with Section 624, reading as follows:

"I hereby certify under penalty of perjury as follows:

"That I am the duly appointed, qualified and acting officer of the herein named state agency. That the names, positions, amounts of salary payable, and other statements contained herein and in the attached documents, are true and correct. That the attached constitutes the 'original pay roll roster' of the herein named state agency. That salary payments are properly and lawfully payable to every employee as certified herein, and that such salary payments are authorized each month from and after the effective date stated herein in the respective amounts and to the respective employees, as indicated, under all laws, rules, and regulations applicable, except as may be modified by pay roll roster change filed by this agency with the State Controller. That the individuals whose names are set forth herein are lawfully employed and all provisions of law governing such employment have been fully complied with. That all deductions listed herein for purposes set forth in Sections 1156, 1156.1 and 13922 (or 1153), Government Code, are in conformity with written authorizations of the employees concerned on file in this office. That the persons for whom payment is authorized herein have taken, subscribed and filed the oaths, including the oath set forth in Section 3103, Government Code, required by law and have in writing declared themselves to be citizens of the United States. That all positions included herein, whether filled or unfilled, have been properly established and approved by the State Personnel Board and Department of Finance, and are in conformity with current budgetary provisions.

"That I have not violated any of the provisions of Article 4 of Division 4 of Title 1 (Sections 1090 to 1097, inclusive) of the Government Code."

(b) The state agency shall promptly notify the State Controller of every lawful addition to, deletion from, or change in the original pay roll roster, or of any exception to the normal pay amounts specified in such roster, with respect to any employee or position during any pay period. Such notification shall be by "pay roll roster change" filed with the Controller. Each pay roll roster change, when certified by an authorized person of the agency, shall constitute a continuing authorization to the Controller to modify the original pay roll roster in accordance therewith except as may be further modified in like manner. Each pay roll roster change shall contain the following certification:

"The foregoing additions to, deletions from, or changes in the original pay roll roster of the herein named state agency are true, correct, and in accordance with law. As modified to date by pay roll roster changes filed with the State Controller, to and including the within, said original pay roll roster is true, correct, and in accordance with law. All persons added to the pay roll roster, or whose status is modified, by this pay roll roster change were employed in approved established positions and have, if required by law, taken the oaths, including the oath set forth in Section 3103 Government Code."

(c) The state agency shall submit, and each payroll prepared and paid by the State Controller under this section shall be supported by attendance reports from the agency in such form and manner as prescribed in the Uniform State Payroll System installed under Section 12470 of the Government Code.

(d) Certification to the State Controller by any state agency in the manner provided in (a) or (b), and (c), above, of the employment of any person, shall constitute authorization to the Controller to make salary payment of not to exceed one month's salary to such person without approval of the employment by the State Personnel Board. Subsequent salary payments shall not be made by the Controller to any such employee unless and until the employment has been approved by the State Personnel Board.

(e) Payroll claims under this section are excepted from the requirements of Sections 651, 653 and 654.

NOTE: Authority cited: Sections 13920 and 13921, Government Code.

HISTORY

1. Renumbering of former section 660 to section 633.7 filed 12–17–99; operative 12–17–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 51).

§ 633.8. Agencies Not Included in Central Disbursement System.

Any state agency or unit thereof which is not includable in the Uniform State Payroll System under Government Code Section 12470 may submit its payroll claims to the State Controller in the form and manner prescribed in Section 660. In such event:

(1) All appropriate forms, procedures and regulations adopted by the State Controller in connection with the operation of the Uniform State Payroll System are applicable.

(2) All provisions of Section 660 are applicable except that subdivision (d) thereof shall not apply, and each claim transmitting an original payroll roster shall contain the following certificate in lieu of the form of certificate prescribed in subdivision (a) of Section 660:

"I hereby certify under penalty of perjury as follows:

"That I am the duly appointed, qualified and acting officer of the herein named state agency. That the names, positions, amounts of salary payable, and other statements contained herein and in the attached documents, are true and correct. That the attached constitutes the 'original payroll roster' of the herein named state agency. That salary payments are properly and lawfully payable to every employee as certified herein, and that such salary payments are authorized each month from and after the effective date stated herein in the respective amounts and to the respective employees, as indicated, under all laws, rules, and regulations applicable, except as may be modified by payroll roster change filed by this agency with the State Controller. That the individuals whose names are set forth herein are lawfully employed and all provisions of law governing such employment have been fully complied with. That all deductions listed herein for purposes set forth in Sections 12420 and 3922 (or 1153), Government Code, are in conformity with written authorizations of the employees concerned on file in this office. That the persons for whom payment is authorized herein have taken, subscribed and filed the oaths, including the oath set forth in Section 3103, Government Code, required by law and have in writing declared themselves to be citizens of the United States.

"That I have not violated any of the provisions of Article 4 of Division 4 of Title 1 (Sections 1090 to 1097, inclusive) of the Government Code."

NOTE: Authority cited: Sections 13920 and 13921, Government Code.

HISTORY

1. Renumbering of former section 660.1 to section 633.8 filed 12–17–99; operative 12–17–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 51).

§ 633.9. Payroll Deductions for Charitable Contributions.

(a) Any state officer or employee may authorize monthly deductions from his salary or wages for payment of charitable contributions pursuant to a plan approved by the Board of Control to the agency handling the principal combined fund drive in any area.

(1) The principal combined fund drive in any area shall be the public donation appeal of an area which combines in one specific annual drive the greatest support for charitable agencies that depend upon public subscriptions for support.

(2) In deciding whether an organization conducts the principal combined fund drive in an area, the Board of Control will consider:

(A) The number of charitable agencies in the area which rely on the drive for their support.

(B) The number of dollars raised in the area during the last completed fund drive, and

(C) The percentage of such dollars disbursed to charitable agencies as a result of the drive.

(b) Applications submitted by agencies handling principal combined fund drives to the Board of Control for approval of plans, shall be in the form prescribed by the Board and shall include the following:

(1) The names of the charitable agencies included in the fund drive.

(2) The boundaries of the area.

(3) A certification under penalty of perjury that the organization is in compliance with the provisions of the Fair Employment Practice Act, Part 4.5, commencing with Section 1410, of Division 2 of the Labor Code. A separate certification shall be submitted by each affiliated member beneficiary of the principal combined fund drive.

(4) Agreement to transmit contributions, as designated by the employee, to any charitable organization qualified as exempt organizations under Section 23701(d) of the California Revenue and Taxation Code, or paragraph (3) of subsection (c) of Section 501 of the United States Internal Revenue Code of 1954, less fundraising and administrative expenses determined by the Board of Control.

(5) Agreement that all state employees in the principal combined fund drive area will be provided, during the fund drive, in addition to the payroll authorization form:

(A) A list of non–affiliated, charitable organizations which have been recognized by the Board of Control in the fund drive area.

(B) Information as to fundraising and administrative cost charged by the principal combined fund drive to nonaffiliated organizations designated by the employee, as determined by the Board of Control.

(C) A form on which the state employee may designate amounts to be contributed to affiliated and non–affiliated beneficiaries.

(6) An agreement to pay, in the manner and time determined by the State Controller, the additional cost to the State of making deductions and remitting the proceeds.

(7) Such other provisions deemed necessary by the Board of Control or the State Controller.

(c) Charitable organizations which are not affiliated beneficiaries of the principal combined fund drive may apply to the Board of Control for

inclusion on the listing of approved non-affiliated organizations which the principal combined drive is required to provide to each employee solicited. Such applications shall be in the form prescribed by the Board of Control and shall include the following:

(1) The name of the organization.

(2) The boundaries of the area in which the organization normally solicits public contributions.

(3) The name of the principal combined fund drive recognized by the Board of Control for the area defined above, in which the organization applies to be included.

(4) An agreement to pay to the principal combined fund drive agency the amount necessary to reimburse the principal combined fund drive agency for fundraising and administrative expenses, as determined by the Board of Control.

(5) A certification that the organization is qualified as an exempt organization under Section 23701(d) of the Revenue and Taxation Code, or paragraph (3) of subsection (c) of Section 501 of the Internal Revenue Code of 1954.

(6) A certification under penalty of perjury that the organization is in compliance with the provisions of the Fair Employment Practice Act, Part 4.5, commencing with Section 1410 of Division 2 of the Labor Code.

(7) Such other provisions deemed necessary by the Board of Control or the State Controller.

(d) An organization recognized pursuant to Section (c) shall be included in the listing in subsequent fund drives upon notification to the Board of Control, at least 90 days before the commencement of each annual fund drive, certifying that the organization's status and conditions of approval remain the same as indicated in the original application.

(e) Procedures for payroll deductions for charitable contributions will include the following:

(1) Employee authorization must be in writing upon the form prescribed by the State Controller, signed by the officer or employee, and submitted to his employing agency, which shall forward the employee authorizations to the State Controller.

(2) The form on which a state employee may designate contributions to an organization affiliated with or not affiliated with the principal combined fund drive shall be in triplicate, one copy each for:

(A) The employee,

(B) The employee's designated beneficiary agency, and

(C) The principal combined fund agency.

(3) Monthly deductions may be authorized in any amount of $2.00, or more.

(4) State officers or employees may not authorize more than one payroll deduction for charitable purposes to be in effect at the same time.

(5) An authorization or cancellation shall not be effective as to any payroll period unless received in sufficient time for the State Controller to process and enter or cancel the deduction on the payroll for that period.

(6) The State Controller may combine authorized deductions for employee association dues and authorized charitable deductions in his records.

NOTE: Authority cited: Section 13923, Government Code. Reference: Section 13923, Government Code.

HISTORY

1. Renumbering of former section 663 to section 633.9 filed 12-17-99; operative 12-17-99 pursuant to Government Code section 11343.4(d) (Register 99, No. 51).

Article 4.2. State Contributions Under State Employees' Medical and Hospital Care Act

§ 634. Claims for Payment.

(a) Authorization for contributions by the State under the State Employees' Medical and Hospital Care Act shall be certified to the State Controller as follows:

"I hereby certify under penalty of perjury as follows:

"That I am the duly appointed, qualified and acting officer of the herein named state agency; that the foregoing action is in accordance with the provisions of Part 5, Division 5 of Title 2 of the Government Code; that payment by the State as provided by Sections 22825 and 22827 through 22829, inclusive, of the Government Code is hereby approved."

(b) Upon certification of any payroll roster change which may or may not affect cancellation of enrollment under the State Employees' Medical and Hospital Care Act, authorization for contributions by the State shall be certified to the State Controller as follows:

"Payment by the State when required under Sections 22825 and 22827 through 22829, inclusive, of the Government Code is hereby approved."

(c) Each authorization shall constitute a continuing claim for payment of the State's contribution until modified by a subsequent authorization filed with the State Controller pursuant to this section.

(d) Claims for these payments are exempt from Sections 622, 623, and 650 through 655, inclusive.

NOTE: Authority cited: Sections 13920 and 13921, Government Code.

HISTORY

1. Renumbering of former article 6.1 to article 4.2 (section 634) and renumbering of former section 664 to section 634 filed 12-17-99; operative 12-17-99 pursuant to Government Code section 11343.4(d) (Register 99, No. 51). For prior history of article 4.2 (sections 636-636.3), see Register 87, No. 44.

Article 5. Claims of Persons Erroneously Convicted of Felonies

§ 640. Presentation of Claim.

Claims on behalf of persons erroneously convicted of felonies shall be filed in duplicate and shall be in substantially the following form:

BEFORE THE BOARD OF CONTROL OF THE STATE OF CALIFORNIA

In the Matter of the Claim of
against the State of California. }

The undersigned Claimant makes claim against the State of California in the sum of _____dollars, and in support of said claim represents as follows:

1. (Name of the felony for which he was convicted, title of the court in which the conviction was had, the date of conviction and length of sentence imposed.)

2. (State prisons in which the sentence was served, length of time incarcerated and the dates thereof.)

3. (Facts showing (a) that the crime with which he was charged was either not committed at all, or, if committed, was not committed by him, (b) that he neither intentionally nor negligently contributed to his arrest and conviction.)

4. (Facts showing the pecuniary injury sustained by him through his erroneous conviction and imprisonment.)

5. (The date of whichever is the latest of the following acts (a) the judgment of acquittal, (b) the discharge, (c) the grant of the pardon, or (d) the release from imprisonment.)

Respectfully submitted.

_____

By _____

Dated: _____ _____

Address

STATE OF CALIFORNIA, }
County of _____ } ss.

_____, being by me first duly sworn, deposes and says: That he is the Claimant above named, that he has read the foregoing claim and knows the contents thereof, that the same is true of his own knowledge except as to those matters therein stated on information and belief, and as to those matters that he believes it to be true.

_____

Subscribed and sworn to before me this ____ day of _____, 19_____.

_____

Notary public in and for the County of _____, State of California.

(Sections 4900 to 4906 Penal Code.)

HISTORY

1. Amendment filed 1–11–60; designated effective 3–1–60 (Register 60, No. 2).

§ 641. Burden of Proof.

In reaching its determination of the merits of the claim, claimant's mere denial of commission of the crime for which he was convicted; reversal of the judgment of conviction on appeal; acquittal of claimant on retrial; or, the failure of the prosecuting authority to retry claimant for the crime, may be considered by the Board but will not be deemed sufficient evidence to warrant the Board's recommendation that claimant be indemnified in the absence of substantial independent corroborating evidence that claimant is innocent of the crime charged. Testimony of witnesses claimant had an opportunity to cross–examine, and evidence to which claimant had an opportunity to object, admitted in prior proceedings relating to the claimant and the crime with which he was charged, may be considered by the Board as substantive evidence. The Board may also consider any other information that it may deem relevant to the issue before it.

NOTE: Authority cited: Section 13920, Government Code. Reference: Sections 4900–4906, Penal Code.

HISTORY

1. New section filed 4–7–71 as an emergency; effective upon filing (Register 71, No. 15).
2. Amendment filed 8–4–71 as an emergency; effective upon filing. Certificate of Compliance included (Register 71, No. 32).

§ 646. Claims of Sheriffs.

HISTORY

1. Amendment filed 10–9–53 as an emergency; designated effective 1–1–54 (Register 53, No. 18).
2. Repealer filed 5–19–67; designated effective 7–1–67 (Register 67, No. 20).

Article 5.2. Hearings for Indemnification of Citizens Benefiting the Public and Indemnification of Victims of Crime

Subarticle 1. General Provisions

§ 647. Time for Presenting Claims.

NOTE: Authority cited: Section 13974, Government Code. Reference: Section 13970, Government Code.

HISTORY

1. Change without regulatory effect renumbering former section 647 to new section 648.1 filed 10–10–97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 41). For prior history, see Register 87, No. 41.

§ 647.1. Applicability.

(a) This article applies to:

(1) an application for assistance to victims of crimes under Government Code sections 13959– 13969.4; and

(2) an application for indemnification by persons benefiting the public under Government Code sections 13970–13974.1.

NOTE: Authority cited: Sections 11400.20, 13920, 13968(a) and 13974, Government Code. Reference: Sections 13963 and 13973, Government Code.

HISTORY

1. Change without regulatory effect renumbering former section 647.1 to new section 648.2 filed 10–10–97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 41). For prior history, see Register 87, No. 41.
2. New article 5.2 (sections 647.1–647.37), subarticle 1 (sections 647.1–647.3) and section filed 10–8–97 as an interim regulation pursuant to Government Code section 11400.20; operative 10–8–97 (Register 97, No. 41). Interim regulations expire on 12–31–98 unless earlier amended or repealed.
3. Interim regulation transmitted to OAL 12–31–98 as a permanent rulemaking and filed 2–17–99; operative 2–17–99 pursuant to Government Code section 11400.20 (Register 99, No. 12).

§ 647.2. Applicable Regulations.

If there is any inconsistency or conflict between the provisions of article 2.5 and this article, the provisions of this article shall apply.

NOTE: Authority cited: Sections 11400.20, 13920, 13968(a) and 13974, Government Code. Reference: Sections 13963 and 13973, Government Code.

HISTORY

1. Change without regulatory effect renumbering former section 647.2 to new section 648.3 filed 10–10–97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 41). For prior history, see Register 87, No. 41.
2. New section filed 10–8–97 as an interim regulation pursuant to Government Code section 11400.20; operative 10–8–97 (Register 97, No. 41). Interim regulations expire on 12–31–98 unless earlier amended or repealed.
3. Interim regulation transmitted to OAL 12–31–98 as a permanent rulemaking and filed 2–17–99; operative 2–17–99 pursuant to Government Code section 11400.20 (Register 99, No. 12).

§ 647.3. Definitions.

(a) As used in this article:

(1) "Attorney" shall mean a member of the California bar; and

(2) "Party" shall mean an applicant.

NOTE: Authority cited: Sections 11400.20, 13920, 13968(a) and 13974, Government Code. Reference: Sections 13963, 13965(d) and 13973, Government Code.

HISTORY

1. Change without regulatory effect renumbering former section 647.3 to new section 648.4 filed 10–10–97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 41). For prior history, see Register 87, No. 41.
2. New section filed 10–8–97 as an interim regulation pursuant to Government Code section 11400.20; operative 10–8–97 (Register 97, No. 41). Interim regulations expire on 12–31–98 unless earlier amended or repealed.
3. Interim regulation transmitted to OAL 12–31–98 as a permanent rulemaking with amendments and filed 2–17–99; operative 2–17–99 pursuant to Government Code section 11400.20 (Register 99, No. 12).

§ 647.4. Indemnification.

NOTE: Authority cited: Section 13974, Government Code. Reference: Sections 13960(d) and 13965(a), Government Code.

HISTORY

1. Change without regulatory effect renumbering former section 647.4 to new section 648.5 filed 10–10–97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 41). For prior history, see Register 87, No. 41.

Subarticle 2. Pre–Hearing Procedure

§ 647.20. Right to Hearing.

(a) An applicant may request a hearing to contest any of the following actions:

(1) a staff recommendation that the board deny finding good cause for the late filing of an application;

(2) a staff determination that an application is not complete; and

(3) a staff recommendation that the board deny, in whole or in part, an application.

NOTE: Authority cited: Sections 11400.20, 13920, 13968(a) and 13974, Government Code. Reference: Sections 13962(a), 13963 and 13973, Government Code.

HISTORY

1. New subarticle 2 (sections 647.20–647.25) and section filed 10–8–97 as an interim regulation pursuant to Government Code section 11400.20; operative 10–8–97 (Register 97, No. 41). Interim regulations expire on 12–31–98 unless earlier amended or repealed.
2. Interim regulation transmitted to OAL 12–31–98 as a permanent rulemaking and filed 2–17–99; operative 2–17–99 pursuant to Government Code section 11400.20 (Register 99, No. 12).

§ 647.20.1. Denial of Hearing for Failure to State Basis to Grant Relief.

(a) The Executive Officer may deny a request for a hearing if it fails to state a basis upon which the applicant may be granted relief.

(b) Prior to denying a request for a hearing under subsection (a), the applicant shall be:

(1) notified of the reason for denying the request for a hearing; and

(2) given thirty days to submit written materials that either refute the reason for the denial, or show that there is a basis upon which relief may be granted.

(c) The Executive Officer shall review written materials submitted under subsection (b)(2), and any other pertinent materials, and prepare a written decision that complies with section 619.1.

(d) A copy of the Executive Officer's decision shall be mailed or delivered to the applicant.

(d) The procedure in this section is a hearing under section 617.6.

(1) An applicant may object to the use of the informal hearing process upon receipt of the notice under subsection (b)(1).

NOTE: Authority cited: Sections 11400.20, 13920, 13968(a) and 13974, Government Code. Reference: Sections 13963 and 13973, Government Code.

HISTORY

1. New section filed 2–17–99; operative 2–17–99 pursuant to Government Code section 11400.20 (Register 99, No. 12).

§ 647.21. Notice of Hearing.

The board shall, if practicable, schedule the hearing in a location convenient to the applicant.

NOTE: Authority cited: Sections 11400.20, 13920, 13968(a) and 13974, Government Code. Reference: Sections 11445.30, 13963 and 13973, Government Code.

HISTORY

1. New section filed 10–8–97 as an interim regulation pursuant to Government Code section 11400.20; operative 10–8–97 (Register 97, No. 41). Interim regulations expire on 12–31–98 unless earlier amended or repealed.
2. Interim regulation transmitted to OAL 12–31–98 as a permanent rulemaking with amendments and filed 2–17–99; operative 2–17–99 pursuant to Government Code section 11400.20 (Register 99, No. 12).

§ 647.22. Information About Hearing Procedure.

The board shall provide information about the hearing rules and procedures at the hearing to applicants and representatives.

NOTE: Authority cited: Sections 11400.20, 13920, 13968(a) and 13974, Government Code. Reference: Sections 11425.10(a)(2), 13963 and 13973, Government Code.

HISTORY

1. New section filed 10–8–97 as an interim regulation pursuant to Government Code section 11400.20; operative 10–8–97 (Register 97, No. 41). Interim regulations expire on 12–31–98 unless earlier amended or repealed.
2. Interim regulation transmitted to OAL 12–31–98 as a permanent rulemaking with amendments and filed 2–17–99; operative 2–17–99 pursuant to Government Code section 11400.20 (Register 99, No. 12).

§ 647.23. Representation of Applicant.

(a) A representative shall provide written disclosure to an applicant if the person represents any other person or entity with a financial interest in the outcome of the application.

(1) The applicant must provide written acknowledgment of receiving the disclosure and written consent to the representation.

(2) The representative's written disclosure and the acknowledgment and consent shall be available upon request by the board, board staff, or the hearing officer.

(3) A person who does not have a written disclosure, acknowledgment of disclosure and consent to representation as required by this section shall be prohibited from representing an applicant at a hearing.

(b) No person shall charge, receive or collect any amount from an applicant for services rendered in connection with any proceeding under this article except as provided in Government Code section 13965(d).

(c) The board shall not pay any fees for representation by a person who is not an attorney.

NOTE: Authority cited: Sections 11400.20, 13920, 13968(a) and 13974, Government Code. Reference: Sections 13963, 13965(d), (e) and 13973, Government Code.

HISTORY

1. New section filed 10–8–97 as an interim regulation pursuant to Government Code section 11400.20; operative 10–8–97 (Register 97, No. 41). Interim regulations expire on 12–31–98 unless earlier amended or repealed.
2. Interim regulation transmitted to OAL 12–31–98 as a permanent rulemaking and filed 2–17–99; operative 2–17–99 pursuant to Government Code section 11400.20 (Register 99, No. 12).

§ 647.24. Access to Application Information.

(a) A representative may receive access to personal information about an applicant in connection with a hearing if:

(1) the applicant authorizes it in writing;

(2) an original authorization is submitted to the board;

(3) the applicant is entitled to have access to the information; and

(4) access is authorized by Government Code section 13968(d), if applicable.

(b) Written authorization under this section must include:

(1) the name, address and phone number of the applicant;

(2) the name, address and phone number of the representative;

(4) the signature of the applicant;

(5) the date on which the authorization was signed;

(6) a description of the information or documents that are authorized to be released; and

(7) the date on which the authorization expires.

(c) An authorization under this section is valid for no longer than three years after the date it was signed.

(d) "Personal information" shall have the same meaning as in Civil Code section 1798(a).

(e) Members of the public may not inspect applications or application materials that may be withheld under the Public Records Act, Government Code section 6250–6270 unless the inspection or disclosure is authorized by this section.

NOTE: Authority cited: Sections 11400.20, 13920, 13968(a) and 13974, Government Code. Reference: Sections 13963, 13968(d) and 13973, Government Code.

HISTORY

1. New section filed 10–8–97 as an interim regulation pursuant to Government Code section 11400.20; operative 10–8–97 (Register 97, No. 41). Interim regulations expire on 12–31–98 unless earlier amended or repealed.
2. Interim regulation transmitted to OAL 12–31–98 as a permanent rulemaking with amendments and filed 2–17–99; operative 2–17–99 pursuant to Government Code section 11400.20 (Register 99, No. 12).

§ 647.25. Objection to Informal Hearing Process.

An applicant must object to having an informal hearing at the time the applicant confirms appearance at a hearing.

NOTE: Authority cited: Sections 11400.20, 13920, 13968(a) and 13974, Government Code. Reference: Sections 11445.30, 13963 and 13973, Government Code.

HISTORY

1. New section filed 10–8–97 as an interim regulation pursuant to Government Code section 11400.20; operative 10–8–97 (Register 97, No. 41). Interim regulations expire on 12–31–98 unless earlier amended or repealed.
2. Interim regulation transmitted to OAL 12–31–98 as a permanent rulemaking with amendments and filed 2–17–99; operative 2–17–99 pursuant to Government Code section 11400.20 (Register 99, No. 12).

§ 647.26. Request for Continuance.

(a) A request for a continuance of a hearing must be in writing and submitted to the Executive Officer as soon as the need for the request is known to the party.

(b) A request for a continuance that is made less than ten working days prior to the date of the hearing may be granted only if good cause exists.

NOTE: Authority cited: Sections 11400.20, 13920, 13968(a) and 13974, Government Code. Reference: Sections 13963 and 13973, Government Code.

HISTORY

1. New section filed 2–17–99; operative 2–17–99 pursuant to Government Code section 11400.20 (Register 99, No. 12).

Subarticle 3. Hearing Procedure

§ 647.30. Conduct of Hearing.

(a) The Executive Officer or hearing officer shall determine whether the hearing shall:

(1) permit the presentation of oral evidence under section 617.7; or

(2) be limited to the submission of written materials under section 617.6.

(b) The determination made under subsection (a) shall be based on the following factors:

(1) complexity of legal or factual issues;

(2) necessity to evaluate credibility of witnesses for a proper determination of issues;

(3) party's representation by legal counsel; and

(4) any other factor likely to affect a just and proper determination of the issues.

(c) Section 617.5 governs hearings held under this article that are conducted by the board.

NOTE: Authority cited: Sections 11400.20, 13920, 13968(a) and 13974, Government Code. Reference: Sections 11445.10(a), 11445.20(c), 13963 and 13973, Government Code.

HISTORY

1. New subarticle 3 (sections 647.30–647.37) and section filed 10–8–97 as an interim regulation pursuant to Government Code section 11400.20; operative 10–8–97 (Register 97, No. 41). Interim regulations expire on 12–31–98 unless earlier amended or repealed.
2. Interim regulation transmitted to OAL 12–31–98 as a permanent rulemaking with amendments and filed 2–17–99; operative 2–17–99 pursuant to Government Code section 11400.20 (Register 99, No. 12).

§ 647.31. Evidence.

(a) The technical rules of evidence relating to evidence and witnesses shall not apply.

(b) The board or hearing officer may rely on evidence that is:

(1) reliable; and

(2) the type of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs regardless of the existence of any common law or statutory rule that might make improper the admission of the evidence over objection in a civil action.

(c) Objections to and arguments about evidence may be considered when determining the weight to be given to the evidence.

(d) The board or hearing officer may rely on written reports and other information received from the law enforcement agency or other governmental agency responsible for investigating the crime.

(e) The board or hearing officer may review and consider:

(1) the application for assistance;

(2) the report and recommendation of staff;

(3) evidence obtained by staff;

(4) evidence submitted by the applicant;

(5) testimony provided by the applicant; and

(6) testimony provided by witnesses.

(f) The board or hearing officer may take official notice under section 617.8 of the board's written policies.

NOTE: Authority cited: Sections 11400.20, 13920, 13968(a) and 13974, Government Code. Reference: Sections 13963(d), (e), (h) and 13973, Government Code.

HISTORY

1. New section filed 10–8–97 as an interim regulation pursuant to Government Code section 11400.20; operative 10–8–97 (Register 97, No. 41). Interim regulations expire on 12–31–98 unless earlier amended or repealed.
2. Interim regulation transmitted to OAL 12–31–98 as a permanent rulemaking with amendments and filed 2–17–99; operative 2–17–99 pursuant to Government Code section 11400.20 (Register 99, No. 12).

§ 647.32. Burden of Proof.

(a) The applicant shall have the burden of proof on all issues necessary to establish eligibility.

(b) The board shall have the burden of proof on all issues necessary to disqualify an applicant under Government Code section 13964, subsections (b), (c) or (d).

(c) The standard of proof is a preponderance of the evidence.

NOTE: Authority cited: Sections 11400.20, 13920, 13968(a) and 13974, Government Code. Reference: Sections 13963 and 13973, Government Code; and *Graham v. State Board of Control* (1995) 33 Cal.App.4th 253, 39 Cal.Rptr.2d 146.

HISTORY

1. New section filed 10–8–97 as an interim regulation pursuant to Government Code section 11400.20; operative 10–8–97 (Register 97, No. 41). Interim regulations expire on 12–31–98 unless earlier amended or repealed.
2. Interim regulation transmitted to OAL 12–31–98 as a permanent rulemaking with amendments and filed 2–17–99; operative 2–17–99 pursuant to Government Code section 11400.20 (Register 99, No. 12).

§ 647.33. Exclusion of Public.

(a) The board or hearing officer may exclude members of the public from a hearing if the application being considered is the result of:

(1) a crime against a minor;

(2) a crime of sexual assault; or

(3) a crime of domestic violence.

(b) The board or hearing officer shall not exclude:

(1) board members;

(2) the hearing officer;

(3) board staff;

(4) the applicant;

(5) a minor applicant's parents or guardians;

(6) the applicant's representative;

(7) witnesses; and

(8) other persons of the applicant's choice to provide assistance to the applicant during the hearing.

(c) The board or hearing officer shall not exclude persons under this section if the applicant or the applicant's representative requests that the hearing remain open to the public.

NOTE: Authority cited: Sections 11400.20, 13920, 13968(a) and 13974, Government Code. Reference: Sections 11425.20, 13963, 13963.1 and 13973, Government Code.

HISTORY

1. New section filed 10–8–97 as an interim regulation pursuant to Government Code section 11400.20; operative 10–8–97 (Register 97, No. 41). Interim regulations expire on 12–31–98 unless earlier amended or repealed.
2. Interim regulation transmitted to OAL 12–31–98 as a permanent rulemaking and filed 2–17–99; operative 2–17–99 pursuant to Government Code section 11400.20 (Register 99, No. 12).

§ 647.34. Copies of Submitted Materials.

A person appearing in a hearing shall provide five legible copies of any written material to be submitted into the record or introduced into evidence at the hearing.

NOTE: Authority cited: Sections 11400.20, 13920, 13968(a) and 13974, Government Code. Reference: Sections 13963 and 13973, Government Code.

HISTORY

1. New section filed 10–8–97 as an interim regulation pursuant to Government Code section 11400.20; operative 10–8–97 (Register 97, No. 41). Interim regulations expire on 12–31–98 unless earlier amended or repealed.
2. Interim regulation transmitted to OAL 12–31–98 as a permanent rulemaking and filed 2–17–99; operative 2–17–99 pursuant to Government Code section 11400.20 (Register 99, No. 12).

§ 647.35. Failure to Appear or Proceed.

If an applicant or representative either fails to appear at a hearing, or fails to proceed, the board or hearing officer may base its decision on any material listed in section 647.31(e)(1)–(4).

NOTE: Authority cited: Sections 11400.20, 13920, 13968(a) and 13974, Government Code. Reference: Sections 13963(f) and 13973, Government Code.

HISTORY

1. New section filed 10–8–97 as an interim regulation pursuant to Government Code section 11400.20; operative 10–8–97 (Register 97, No. 41). Interim regulations expire on 12–31–98 unless earlier amended or repealed.
2. Interim regulation transmitted to OAL 12–31–98 as a permanent rulemaking with amendments and filed 2–17–99; operative 2–17–99 pursuant to Government Code section 11400.20 (Register 99, No. 12).

§ 647.36. Issues for Hearing on Application to Indemnify Citizens Benefiting the Public.

(a) An applicant must prove all of the following:

(1) the nature of the crime committed by the apprehended criminal or prevented by the action of the applicant; or

(A) the nature of the action of the applicant in rescuing a person in immediate danger of injury or death as a result of fire, drowning, or other catastrophe; and

(B) the circumstances involved;

(2) the applicant's action substantially and materially contributed to:

(A) the apprehension of a criminal;

(B) the prevention of a crime; or

(C) the rescue of a person in immediate danger of injury or death due to fire, drowning, or other catastrophe;

(3) as a direct consequence of subdivision (a)(2), the applicant suffered:

(A) personal injury;

(B) property damage; or

(C) death; and

(4) the extent of the injury or damage under subdivision (a)(3) for which applicant was not compensated from any other source.

NOTE: Authority cited: Sections 11400.20, 13920 and 13974, Government Code. Reference: Section 13973, Government Code.

HISTORY

1. New section filed 10–8–97 as an interim regulation pursuant to Government Code section 11400.20; operative 10–8–97 (Register 97, No. 41). Interim regulations expire on 12–31–98 unless earlier amended or repealed.
2. Interim regulation transmitted to OAL 12–31–98 as a permanent rulemaking and filed 2–17–99; operative 2–17–99 pursuant to Government Code section 11400.20 (Register 99, No. 12).

§ 647.37. Notice and Public Comment on Proposed Decision.

Section 619.4 shall not apply to hearings under this article.

NOTE: Authority cited: Sections 11400.20, 13920 and 13974, Government Code. Reference: Section 11125.7(d), Government Code.

HISTORY

1. New section filed 10–8–97 as an interim regulation pursuant to Government Code section 11400.20; operative 10–8–97 (Register 97, No. 41). Interim regulations expire on 12–31–98 unless earlier amended or repealed.
2. Interim regulation transmitted to OAL 12–31–98 as a permanent rulemaking and filed 2–17–99; operative 2–17–99 pursuant to Government Code section 11400.20 (Register 99, No. 12).

Article 5.5. Indemnification of Citizens Benefiting the Public

§ 648.1. Time for Presenting Claims.

There shall be presented to the Board all claims filed by citizens who have benefited the public through their actions as "good samaritans" to the people around them. A claim filed under this article shall be presented to the State Board of Control not later than one year after occurrence of the injury or damage. A claim filed after such shall not be considered unless the Board determines that, for good sufficient reason, the claim was not filed within said period.

NOTE: Authority cited: Section 13974, Government Code. Reference: Section 13970, Government Code.

HISTORY

1. Change without regulatory effect renumbering former section 647 to new section 648.1 filed 10–10–97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 41). For prior history, see Register 87, No. 41.

§ 648.2. Contents of Claims.

All claims shall be filed in duplicate, shall be signed and verified by the claimant, or claimant's parent or guardian if claimant is a minor, and shall state the facts constituting the claim in simple, concise language. In the event the claim is filed on behalf of the claimant by a law enforcement or public safety agency, the claim shall be signed by such agency and need not be verified.

NOTE: Authority cited: Section 13974, Government Code. Reference: Section 13970, Government Code.

HISTORY

1. Change without regulatory effect renumbering former section 647.1 to new section 648.2 filed 10–10–97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 41). For prior history, see Register 87, No. 41.

§ 648.3. Form of Claims.

All claims or amendments filed with the State Board of Control under this article shall be filed on forms, (identified as Form BC–VOC–100—APPLICATION FOR VICTIM OF CRIME COMPENSATION), provided by the Board.

NOTE: Authority cited: Section 13974, Government Code. Reference: Sections 13961 and 13961.3, Government Code.

HISTORY

1. Change without regulatory effect renumbering former section 647.2 to new section 648.3 filed 10–10–97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 41). For prior history, see Register 87, No. 41.

§ 648.4. Disallowance.

A claim for indemnification will not be allowed if the crime prevented, or the crime committed by the criminal was against the person or property of the person who prevented the crime, apprehended the criminal, or who substantially and materially assisted a peace officer for this purpose.

NOTE: Authority cited: Section 13974, Government Code. Reference: Section 13973, Government Code.

HISTORY

1. Change without regulatory effect renumbering former section 647.3 to new section 648.4 filed 10–10–97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 41). For prior history, see Register 87, No. 41.

§ 648.5. Indemnification.

The maximum amount of any claim the State Board of Control shall approve for payment shall not exceed the amount necessary to indemnify or reimburse the claimant for:

(a) The actual value of property damaged or destroyed, or the cost of repairing such property.

(b) Necessary expenses incurred for hospitalization or medical treatment, loss of wages, or other necessary expenses directly related to the injury or death. If continued hospitalization or medical treatment is necessary, a partial award may be made and the claim subsequently reconsidered for the purpose of recommending an additional award.

NOTE: Authority cited: Section 13974, Government Code. Reference: Sections 13960(d) and 13965(a), Government Code.

HISTORY

1. Change without regulatory effect renumbering former section 647.4 to new section 648.5 filed 10–10–97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 41). For prior history, see Register 87, No. 41.

Article 5.6. Indemnification of Victims of Crime

§ 649. Definitions.

(a) As used in this article:

(1) "Applicant" means a person submitting either an application as defined in subsection (a)(2) or a supplemental claim as defined in subsection (a)(23).

(2) "Application" means an initial application for assistance in the Victims of Crime program under Government Code sections 13950–13974.5.

(3) "Board" means the Victim Compensation and Government Claims Board.

(4) "Certification under penalty of perjury" or "upon information and belief" as applied to the filing of an application or supplemental claim means a single signature under penalty of perjury or information and belief as required to certify that the contents of the application or supplemental claim are true and correct within the knowledge or belief of the applicant.

(5) "Code" means the California Government Code.

(6) "Collateral benefits" shall include but not be limited to the following types of benefits:

(A) All forms of private and public insurance benefits paid to or on behalf of the insured victim, the victim's survivors, or derivative victim, including medical, disability, wage loss, liability and casualty insurance including vehicle, commercial and residential insurance.

(B) All forms of public and private assistance paid to, or on behalf of, the victim, the victim's survivors, or derivative victim, including Medi–Cal, social security, state disability insurance, Worker's Compensation and Medicare.

(C) Any restitution paid by the criminal perpetrator directly to the victim or his or her survivors whether collected by public agencies and paid over to the recipient or collected directly by the recipient.

(7) "Denial of the application" as used in Section 13958 of the code and as construed for purposes of the board's hearing process means a preliminary determination and recommendation for disallowance by board staff and shall not be construed to mean a final administrative decision following a hearing by the board to deny the application or supplemental claim.

(8) "Derivative victim" means the same as in Government Code section 13951(c).

(9) "Direct payment" as used in Section 13957.7(c)(1) of the code shall be those payments sent directly to providers when there is no objection by the victim or derivative victim, or when good cause is demonstrated, notwithstanding a victim's or derivative victim's objection.

(10) "Family member" means a person who is related to the victim at the time of the qualifying crime by blood, marriage, or adoption.

(11) "File" or "filed" as it applies to an application or supplemental claim for VOC benefits means submitting the application or supplemental claim to the board or a joint powers victim witness center. An application or supplemental claim shall be deemed filed with the board or a joint powers victim witness center on the date that the application or supplemental claim is postmarked by the United States Postal Service or other private carrier postage prepaid and properly addressed, or on the date that it is personally delivered to the board or a joint powers victim witness center.

(12) "Fund" means the Restitution Fund as set forth in Government Code section 13964.

(13) "Hearing" means the same as under article 2.5 of these regulations.

(14) "Injury" means the same as in Government Code section 13955(f).

(15) "Joint powers victim witness center" means an agency under contract with the board to process applications under Government Code section 13954(c).

(16) "Law enforcement agency" means:

(A) an agency authorized to investigate or prosecute violations of law, including but not limited to:

1. a city police department;
2. a county sheriff's department;
3. a district attorney's office;
4. the California Highway Patrol; and
5. the Office of the California Attorney General.

(B) an agency from another state that investigates or prosecutes violations of law that are comparable to agencies listed in subsection (a)(16)(A); and

(C) Federal agencies that investigate or prosecute violations of law.

(17) "May" means that the conduct or requirement is permissive and discretionary.

(18) "Qualifying crime" means a crime as defined in Government Code section 13951(b) that resulted in one of the following:

(A) injury to the victim;

(B) threat of injury to the victim; or

(C) the death of the victim.

(19) "Related to the victim by blood, marriage or adoption" means:

(A) the victim's spouse;

(B) relatives within the 4th degree of the victim or the victim's spouse as follows:

1. first degree relatives include parent and child;
2. second degree relatives include grandparent, brother, sister, and grandchild;
3. third degree relatives include great–grandparent, uncle, aunt, nephew, niece, and great–grandchild;
4. fourth degree relatives include great–great– grandparent, great uncle, great aunt, first cousin, grandnephew, and grandniece;

(C) the spouse of a person described in subsection (a)(19)(B); or

(D) the victim's fiancé or fiancée.

(20) "Resident of California" means the person's place of residence is California as determined by one of the following:

(A) Government Code section 244 for adults; and

(B) Welfare and Institutions Code section 17.1 for minors.

(21) "Shall" means that the conduct or requirement is mandatory and not discretionary.

(22) "State" means the District of Columbia, the Commonwealth of Puerto Rico and any other possession or territory of the United States.

(23) "Supplemental claim" means a request for assistance submitted after the application is received.

(24) "Threat of physical injury" means conduct that meets both of the following:

(A) a reasonable person would feel threatened in the same circumstances as the victim; and

(B) a reasonable person in the same circumstances as the victim would believe both of the following:

1. the threat would be carried out; and
2. physical injury would result if the threat were carried out.

(25) "Victim" means a person who sustained injury or death as a direct result of a qualifying crime and is one of the following:

(A) a resident of California;

(B) a member of the military stationed in California;

(C) a family member living with a member of the military stationed in California; or

(D) a nonresident of California who is a victim of a qualifying crime occurring within California if the board determines that federal funds are available for compensation of victims of crime.

(26) "VOC" means the Victims of Crime program as specified in Title 2, Division 3, Part 4, Chapter 5, Article 1 of the Government Code, commencing with Section 13950.

(27) "Water vehicle" means the same as "vessel" as defined in Harbors and Navigation Code section 651(g).

(28) "Witnessed the crime" as used in Section 13955(c)(4) of the code means actual physical presence at the scene of the qualifying crime such that the person was a percipient witness to the qualifying crime.

(29) "Zero award" means a determination of eligibility for assistance that does not involve a determination concerning monetary assistance for any pecuniary loss.

NOTE: Authority cited: Sections 13920 and 13974, Government Code. Reference: Sections 13950, 13951, 13952, 13952.5, 13953, 13954, 13955, 13956, 13957.7, 13958, 13959, 13964 and 13964, Government Code.

HISTORY

1. New section filed 9–29–88 as an emergency; operative 10–1–88 (Register 88, No. 41). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 1–30–89. For prior history, see Register 87, No. 41.
2. Readoption of emergency section filed 1–4–89; operative 1–4–89 (Register 89, No. 3). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 5–4–89.
3. Readoption of emergency section filed 5–19–89; operative 5–19–89 (Register 89, No. 21). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 9–18–89.
4. Certificate of Compliance as to 5–19–89 order including amendment transmitted to OAL 9–14–89 and filed 10–16–89 (Register 89, No. 43).
5. Amendment of subsection (g), repealer of subsection (i) and subsection relettering filed 10–8–97 as an interim regulation pursuant to Government Code section 11400.20; operative 10–8–97 (Register 97, No. 41). Interim regulations expire on 12–31–98 unless earlier amended or repealed.
6. Amendment of first paragraph and subsection (e), repealer of subsections (e)(1) and (e)(2) and incorporation of amended subsection (e)(3) into newly amended subsection (e), and amendment of subsection (g) filed 11–2–98 as an emergency; operative 11–2–98 (Register 98, No. 45). A Certificate of Compliance must be transmitted to OAL by 3–2–99 or emergency language will be repealed by operation of law on the following day.
7. Interim regulation transmitted to OAL 12–31–98 as a permanent rulemaking and filed 2–17–99; operative 2–17–99 pursuant to Government Code section 11400.20 (Register 99, No. 12).
8. Certificate of Compliance as to 11–2–98 emergency order transmitted to OAL 3–1–99 and filed 4–2–99 (Register 99, No. 14).
9. Repealer and new section filed 12–17–99; operative 12–17–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 51).
10. Change without regulatory effect amending subsections (a)(2)–(3), (a)(7)–(9), (a)(12), (a)(14)–(15), (a)(16)(C), (a)(18) and (a)(26)–(28) and amending NOTE filed 12–6–2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 49).

§ 649.1. Residency Requirements.

(a) A victim must be a resident of California if the qualifying crime occurred outside California.

(b) A victim need not be a resident of California if the qualifying crime occurred in California if the board determines that federal funds are available for compensation of victims of crime.

(c) A derivative victim of a qualifying crime prior to January 1, 1999, must be a resident of California.

(d) A derivative victim of a qualifying crime on or after January 1, 1999, must be a resident of California or another state.

NOTE: Authority cited: Sections 13920 and 13974, Government Code. Reference: Sections 13951 and 13955, Government Code.

HISTORY

1. Change without regulatory effect repealing former Section 649.1, and renumbering and amendment of Section 649.2 to Section 649.1 filed 9–28–87; operative 10–28–87 (Register 87, No. 41).
2. Amendment filed 9–29–88 as an emergency; operative 10–1–88 (Register 88, No. 41). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 1–30–89.
3. Readoption of emergency section filed 1–4–89; operative 1–4–89 (Register 89, No. 3). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 5–4–89.
4. Readoption of emergency section filed 5–19–89; operative 5–19–89 (Register 89, No. 21). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 9–18–89.
5. Certificate of Compliance as to 5–19–89 order including amendment transmitted to OAL 9–14–89 and filed 10–16–89 (Register 89, No. 43).
6. Amendment of subsections (a) and (b) filed 12–10–96 as an emergency; operative 12–10–96 (Register 96, No. 50). A Certificate of Compliance must be transmitted to OAL by 4–9–97 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 12–10–96 order transmitted to OAL 4–2–97 and filed 5–14–97 (Register 97, No. 20).
8. Amendment of subsections (b) and (e) filed 10–8–97 as an interim regulation pursuant to Government Code section 11400.20; operative 10–8–97 (Register 97, No. 41). Interim regulations expire on 12–31–98 unless earlier amended or repealed.
9. Amendment filed 11–2–98 as an emergency; operative 11–2–98 (Register 98, No. 45). A Certificate of Compliance must be transmitted to OAL by 3–2–99 or emergency language will be repealed by operation of law on the following day.
10. Interim regulation transmitted to OAL 12–31–98 as a permanent rulemaking and filed 2–17–99; operative 2–17–99 pursuant to Government Code section 11400.20 (Register 99, No. 12).
11. Certificate of Compliance as to 11–2–98 emergency order transmitted to OAL 3–1–99 and filed 4–2–99 (Register 99, No. 14).
12. Amendment filed 12–17–99; operative 12–17–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 51).
13. Change without regulatory effect renumbering former section 649.1 to section 649.15 and renumbering former section 651.1 to section 649.1, including amendment of NOTE, filed 12–6–2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 49).

§ 649.1.1. Timely Filing of Application for Derivative Victim. [Renumbered]

HISTORY

1. New section filed 11–2–98 as an emergency; operative 11–2–98 (Register 98, No. 45). A Certificate of Compliance must be transmitted to OAL by 3–2–99 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 11–2–98 emergency order transmitted to OAL 3–1–99 and filed 4–2–99 (Register 99, No. 14).
3. Amendment of subsections (a) and (b) filed 12–17–99; operative 12–17–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 51).
4. Change without regulatory effect renumbering former section 649.1.1 to section 649.16 filed 12–6–2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 49).

§ 649.2. Qualifying Crime Occurring Outside California.

(a) A California resident who is a victim of a qualifying crime outside California shall first apply for assistance in the state where the qualifying crime occurred.

(1) Subsection (a) shall not apply if the qualifying crime occurred in a state that does not provide assistance to a non–resident victim.

(b) A California resident who is a victim of a qualifying crime outside California who is eligible for assistance shall not receive assistance until one of the following occurs:

(1) the program of the state in which the qualifying crime occurred determines that the person is not eligible for the program; or

(2) the program benefits of the state in which the qualifying crime occurred are exhausted.

(c) This section shall not apply if the qualifying crime occurred both inside and outside California.

NOTE: Authority cited: Sections 13920 and 13974, Government Code. Reference: Section 13955, Government Code.

HISTORY

1. Change without regulatory effect renumbering and amending former Section 649.2 to Section 649.1, and renumbering and amendment of Section 649.3 to Section 649.2 filed 9–28–87; operative 10–28–87 (Register 87, No. 41).
2. Change without regulatory effect pursuant to Title 1, California Code of Regulations, Section 100(b) (3) filed 2–16–90 (Register 90, No, 9).
3. Amendment filed 12–17–99; operative 12–17–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 51).
4. Change without regulatory effect renumbering former section 649.2 to section 649.12 and renumbering former section 653.2 to section 649.2, including amendment of NOTE, filed 12–6–2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 49).

§ 649.3. Vehicle–Related Qualifying Crime.

(a) No act involving the operation of a motor vehicle, aircraft, or water vehicle constitutes a qualifying crime except as provided in subsection (b).

(b) Notwithstanding subsection (a), the following shall constitute qualifying crimes:

(1) injury or death intentionally inflicted through the use of:

(A) a motor vehicle;

(B) an aircraft; or

(C) a water vehicle.

(2) injury or death caused by a driver in violation of Vehicle Code section 20001 [Hit and run];

(3) injury or death by a person who is under the influence of an alcoholic beverage or drug;

(4) injury or death by a driver of a motor vehicle while fleeing the scene of a crime in which the driver knowingly or willingly participated;

(5) murder [Penal Code section 187] when a motor vehicle, aircraft or water vehicle is the instrumentality of the murder;

(6) gross vehicular manslaughter while intoxicated [Penal Code section 191.5];

(7) injury or death caused by a driver in violation of Penal Code section 192(c) [Vehicular manslaughter];

(8) causing bodily injury while driving under the influence of alcohol or drugs [Vehicle Code section 23153];

(9) injury or death caused by a driver in violation of Penal Code section 192.5 [Vehicular manslaughter in a vessel].

NOTE: Authority cited: Sections 13920 and 13974, Government Code. Reference: Section 13955, Government Code.

HISTORY

1. Change without regulatory effect renumbering and amending former Section 649.3 to Section 649.2, and renumbering and amendment of Section 649.6 to Section 649.3 filed 9–28–87; operative 10–28–87 (Register 87, No. 41).
2. Amendment of subsections (a) and (b) filed 9–29–88 as an emergency; operative 10–1–88 (Register 88, No. 41). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 1–30–88.
3. Readoption of emergency section filed 1–4–89; operative 1–4–89 (Register 89, No. 3). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 5–4–89.
4. Readoption of emergency section filed 5–19–89; operative 5–19–89 (Register 89, No. 21). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 9–18–89.
5. Certificate of Compliance as to 5–19–89 order including amendment of NOTE transmitted to OAL 9–14–89 and filed 10–16–89 (Register 89, No. 43).
6. Change without regulatory effect renumbering former section 649.3 to section 649.24 and renumbering former section 654.1 to section 649.3, including amendment of NOTE, filed 12–6–2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 49).

§ 649.4. Eligibility of Felons.

(a) The Board shall accept an application or a petition for relief to file a late application from a person who has been convicted of a felony in the same manner as for other applicants. Neither that the applicant is presently incarcerated nor that the applicant has been convicted of a felony and has not been discharged from probation or released form a correctional institution and discharged from parole shall be reason for the Board to refuse to accept an application.

(b)(1) The Board shall not grant assistance to a person who has been convicted of a felony committed on or after January 1, 1989, when the assistance is to compensate for pecuniary loss sustained after the person is convicted of the felony and before the person is discharged from probation or has been released from a correctional facility and is discharged from parole, if any.

(2) The Board shall grant assistance to a person otherwise eligible for assistance who has been convicted of a felony to compensate for pecuniary loss sustained as a result of victimization occurring after conviction

and before discharge from probation or release form a correctional facility and discharge from parole, when the loss was incurred after discharge from probation or parole.

(3) The pecuniary loss for which reimbursement is barred because it was sustained after the person had been convicted of a felony and before the person was discharged from probation or released from a correctional institution and discharged from parole will not become reimbursable upon the person's discharge from probation or release from a correctional institution and discharge from parole.

(c) As used in this section, "parole" includes "supervised release."

NOTE: Authority cited: Section 13974, Government Code. Reference: Sections 13951 and 13956, Government Code.

HISTORY

1. Change without regulatory effect renumbering former section 649.72 to section 649.4, including amendment of NOTE, filed 12–6–2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 49). For prior history of section 649.4, see Register 99, No. 12.

§ 649.5. Effect of Felon Status on the Eligibility of Victims and Derivative Victims.

(a) The fact that a victim is disqualified from receiving assistance under section 649.4(b) shall not affect the eligibility of a derivative victim of the same qualifying crime who is otherwise eligible for assistance.

(b) The fact that a derivative victim is disqualified from receiving assistance under section 649.4(b) shall not affect the eligibility of a victim of the same qualifying crime who is otherwise eligible for assistance.

NOTE: Authority cited: Sections 13920 and 13974, Government Code. Reference: Sections 13951, 13952 and 13956(d), Government Code.

HISTORY

1. Change without regulatory effect renumbering former section 651.5 to section 649.5, including amendment of section heading, section and NOTE, filed 12–6–2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 49). For prior history of section 649.5, see Register 99, No. 51.

§ 649.6. Effective Date of Substantive Changes.

(a) Unless otherwise required by law, a substantive change to eligibility shall be effective for applications resulting from a qualifying crime that occurred on or after the effective date of the substantive change.

(b) An effective date or date of limitation included in the express provisions of a regulation section shall apply if there is any conflict or inconsistency with this section.

NOTE: Authority cited: Sections 13920 and 13974, Government Code. Reference: Sections 13950–13974.5, Government Code.

HISTORY

1. Change without regulatory effect renumbering former section 650.1 to section 649.6, including amendment of NOTE, filed 12–6–2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 49). For prior history of section 649.6, see Register 99, No. 51.

§ 649.7. Complete Application.

Applications for assistance as specified in Section 13952 of the code shall be deemed to be complete within the meaning of Section 13952(c) of the code only if:

(a) The applicant provides all information as directed in the instructions to, and as elicited on, the application which the board shall require to be certified under penalty of perjury or upon information and belief. As part of the application the board shall require the following information:

(1) The name, residence address, and if different, mailing address, social security number, date of birth and telephone number of the applicant seeking restitution from the Fund.

(2) A designation as prescribed on the application as to whether the applicant is a victim or derivative victim, or in the event of a death caused by a crime, a person who legally assumed the obligation, or who voluntarily paid the medical or burial expenses incurred as a direct result of the qualifying crime (Section 13957(a)(9)(A) and (C) of the code).

(3) If the person signing the application as the applicant is a person other than the actual victim or derivative victim seeking assistance, some designation as to the legal authority of such person to apply for benefits on behalf of the victim or derivative victim (e.g. parent or legal guardian for a child; or court appointed conservator for adults adjudicated to be incompetent.)

(4) A description of the date, nature and circumstances of the qualifying crime.

(5) Except in the case of a request for "zero awards," a complete statement of losses and reimbursements directly related to the qualifying crime including but not limited to the cost of medical care or burial expense, the loss of wages the victim has incurred to date, or the loss of support the derivative victim has incurred to date, for which they claim assistance. This statement shall include the date or dates that medical, mental health or other professional services were provided to the victim or derivative victim and a description of the services provided along with a statement that the services were in fact received and that such services were required as a direct result of the qualifying crime and for no other reason. If mental health psychotherapy services were provided, the statement shall include a designation as to whether any counseling or psychotherapy provided was in an individual, family or group setting.

(6) A signed authorization permitting the board or a joint powers victim witness center, or both, to verify the contents of the application.

(7) If the applicant is represented by an attorney or other person, the name, address and telephone number of such representative.

(8) A statement whether the victim, the victim's survivors, or the derivative victim have commenced or intend to commence a civil action to recover monetary damages from the perpetrator or perpetrators of the qualifying crime or any other parties in connection with the qualifying crime, along with the name, telephone number and address of any attorney representing the applicant in such civil proceedings.

(9) A statement disclosing all collateral benefits including any private or public insurance or benefits payable from private or public programs of assistance for which the victim, the victim's survivors, or the derivative victim have applied or for which they may be eligible.

(b) In addition to the information as specified in subparagraph (a) above, applicants seeking types of assistance as set forth in Section 13957 of the code shall provide the following information relative to each category of assistance claimed:

(1) If medical or mental health expenses are claimed to have been incurred as a direct result of the qualifying crime, an itemized statement from the professional provider for all medical or mental health expenses incurred as of the date of the application including the license number of the professional certificate issued by the State of California or other jurisdiction to the medical or mental health practitioner providing the service as well as his or her business address and telephone number. Providers of services who are authorized by law to offer such services as part of their on–going business activity, but who are not required to obtain a professional or occupational license must provide either their social security number, or their Federal Employer Identification Number.

(2) If loss of income is claimed to have occurred as a direct result of the qualifying crime, the applicant shall produce evidence of income loss as well as a statement of disability from the treating medical or mental health provider.

Evidence of loss of income may include but not be limited to, documentation of earnings immediately preceding the date of the qualifying crime such as copies of all wage check stubs for periods immediately preceding the date of the qualifying crime, or copies of all state and federal income tax returns filed by the victim or applicant for the tax year immediately preceding the date of the crime or during the year of the crime, if available, or a Statement of Wages or Income as used to file with federal or state taxing authorities such as a W–2 IRS form actually filed with the taxing authorities, or a statement signed by the employer attesting to the payment of wages or income to the victim which statement shall include the name, telephone number and address of the employer or person who paid or would have paid the wages or income along with the employer's Federal Identification Number.

A statement of disability shall be signed by the medical or mental health provider and shall include information concerning the prognosis

for recovery, the extent and expected duration of disability, and certification that the disability resulted directly from the qualifying crime.

(3) If funeral or burial expenses are claimed as a direct result of the qualifying crime, an itemized statement for all funeral or burial expenses incurred through the date of the application.

(4) If rehabilitative services are claimed, the applicant shall produce that evidence of need, and documentation for rehabilitation as specified in Section 649.24(c) of these regulations.

(c) A copy of the crime report or substitute reports as set forth herein evidencing the commission of the qualifying crime and setting forth the circumstances and factual events surrounding it has been received.

In order to expedite the processing of the application, applicants shall be encouraged to obtain and submit, along with the application, a copy of the crime report as prepared by the law enforcement agency to which the qualifying crime was reported. In cases in which the applicant or his or her representative are unable or decline to obtain such crime report, VOC or joint powers victim witness centers shall obtain the crime report.

No application shall be deemed complete until VOC or its contract agencies have received a copy of the crime report.

In cases in which the law enforcement agency deems it advisable to withhold a copy of the crime report from public disclosure in order to assure the security of innocent parties or the integrity of on–going criminal investigations, such agency may substitute a report that provides the facts of the qualifying crime, whether the victim or derivative victim participated in the commission of the qualifying crime, was involved in the events leading to the qualifying crime and whether the victim or derivative victim cooperated with law enforcement. In the event that no crime report was prepared, a declaration must be provided, signed under penalty of perjury by the victim or derivative victim, or in the case of a minor, by the adult having lawful supervision and custody of the minor upon information and belief, stating whether the qualifying crime was reported to a law enforcement agency, and if not, the reasons why, and providing information on all measures taken by the victim or derivative victim, or parties exercising custody and control of the victim or derivative victim to cooperate with law enforcement. In the event that no crime report was prepared the declaration shall include a narrative of the events leading up to and including the actual perpetration of the qualifying crime giving rise to the claim as well as the names of all witnesses.

NOTE: Authority cited: Section 13974, Government Code. Reference: Sections 13951, 13952, 13954, 13956, 13957, 13957.2, 13957.5, 13957.7 and 13957.9, Government Code.

HISTORY

1. Change without regulatory effect repealing former Section 649.7, and renumbering and amendment of Section 649.14 to Section 649.7 filed 9–28–87; operative 10–28–87 (Register 87, No. 41).
2. Change without regulatory effect pursuant to Title 1, California Code of Regulations, Section 100(b)(3) filed 2–16–90 (Register 90, No. 9).
3. Change without regulatory effect renumbering former section 649.7 to section 649.35 and renumbering former section 649.9 to section 649.7, including amendment of section and NOTE, filed 12–6–2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 49).

§ 649.8. Emergency Awards.

(a) An applicant may indicate on the application that he or she is applying for an emergency award.

(b) Upon receipt of an application for an emergency award, the Board shall expedite the process of verifying the application to determine if an emergency award is appropriate. Board staff shall make telephone calls and transmit documents electronically or by facsimile to quickly obtain information necessary to evaluate an application for an emergency award. A decision regarding an application for an emergency award shall be promptly communicated to the applicant.

(c) An emergency award may be allowed when it is necessary to avoid or mitigate a substantial hardship to the applicant that is the direct result of the qualifying crime. Substantial hardship shall include the following:

(1) The inability to provide for the necessities of life, including but not limited to shelter, food, medical care, or personal safety, without the emergency award.

(2) The inability to pay for funeral and burial expenses or crime scene cleaning expenses without the emergency award.

(d) The amount of an emergency award shall be based on the applicant's immediate financial need as a direct result of the qualifying crime. Immediate financial need shall be determined by the financial assistance needed to avoid substantial hardship before the receipt of non–emergency assistance.

(e) An applicant for an emergency award shall provide sufficient information to substantiate both of the following:

(1) An emergency award is necessary to avoid substantial hardship as a direct result of the qualifying crime; and

(2) The applicant has an immediate financial need for an emergency award as a direct result of the qualifying crime.

(f) If sufficient information as required by subdivision (e) is not provided, an application for an emergency award shall be processed as an application for non–emergency assistance. The amount of the emergency award being requested shall be considered when determining the amount or type of information required to verify the application for an emergency award.

NOTE: Authority cited: Section 13920(c), Government Code. Reference: Section 13952.5, Government Code.

HISTORY

1. Change without regulatory effect repealing former Section 649.8, and renumbering and amendment of Section 649.15 to Section 649.8 filed 9–28–87; operative 10–28–87 (Register 87, No. 41).
2. Change without regulatory effect pursuant to Title 1, California Code of Regulations, Section 100(b)(3) filed 2–16–90 (Register 90, No. 9).
3. Change without regulatory effect renumbering former section 649.8 to section 649.36 and renumbering former section 649.11 to section 649.8 filed 12–6–2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 49).

§ 649.9. Incomplete Applications.

Incomplete applications for emergency awards and supplemental claims shall be returned to the applicant for completion or appeal in the same manner as an incomplete application is returned to the applicant pursuant to Section 13952(c)(2) of the code.

NOTE: Authority cited: Sections 13952, 13952.5 and 13974, Government Code. Reference: Sections 13952 and 13952.5, Government Code.

HISTORY

1. New section filed 9–29–88 as an emergency; operative 10–1–88 (Register 88, No. 41). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 1–30–89. For prior history, see Register 87, No. 41.
2. Readoption of emergency section filed 1–4–89; operative 1–4–89 (Register 89, No. 3). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 5–4–89.
3. Readoption of emergency section filed 5–19–89; operative 5–19–89 (Register 89, No. 21). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 9–18–89.
4. Certificate of Compliance as to 5–19–89 order including amendment transmitted to OAL 9–14–89 and filed 10–16–89 (Register 89, No. 43).
5. Amendment filed 12–17–99; operative 12–17–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 51).
6. Change without regulatory effect renumbering former section 649.9 to section 649.7 and renumbering former section 649.12 to section 649.9, including amendment of section and NOTE, filed 12–6–2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 49).

§ 649.10. Zero Awards.

In cases where VOC determines that the application filed by the applicant merely seeks an initial determination of eligibility without reference to specific pecuniary loss, or where the applicant fails to produce evidence of pecuniary loss as required in Section 649.7(b) of these regulations, the board shall process the application as a "zero award". In such cases the VOC notice of eligibility to the applicant and his or her representative within a period of 90 days from the acceptance of a complete application shall constitute compliance with the average 90 day processing requirement as set forth in Section 13957.2(c) of the code. The issuance of a zero award shall not obligate the board to pay claims until it has received fully verified evidence of pecuniary loss by the victim or derivative victim, and has satisfied itself that no other source of benefits or

assistance is available to the victim or derivative victim to compensate for this loss.

NOTE: Authority cited: Section 13974, Government Code. Reference: Section 13957.2, Government Code.

HISTORY

1. New section filed 9–29–88 as an emergency; operative 10–1–88 (Register 88, No. 41). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 1–30–89. For prior history, see Register 87, No. 41.
2. Readoption of emergency section filed 1–4–89; operative1–4–89 (Register 89, No. 3). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 5–4–89.
3. Readoption of emergency section filed 5–19–89; operative 5–19–89 (Register 89, No. 21). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 9–18–89.
4. Certificate of Compliance as to 5–19–89 order including amendment transmitted to OAL 9–14–89 and filed 10–16–89 (Register 89, No. 43).
5. Amendment filed 12–17–99; operative 12–17–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 51).
6. Change without regulatory effect renumbering former section 649.10 to section 649.22 and renumbering former section 649.22 to section 649.10, including amendment of section and NOTE, filed 12–6–2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 49).

§ 649.11. Application Without Verified Pecuniary Loss.

When an applicant files an application for assistance supplying all of the required information as set forth in paragraph (a) of Section 649.7 but either fails or declines to provide any of the information needed to verify actual pecuniary loss as set forth in paragraph (b) of Section 649.7, the VOC shall treat the application as an application for a zero award and so notify the applicant and his or her representative. Nothing in this section shall be construed to prevent VOC from paying those claims for which documentation required by subparagraph (b) of Section 649.7 has been provided while treating the balance of any claims for which information required by that regulation has not been submitted as an application for a zero award.

NOTE: Authority cited: Section 13974, Government Code. Reference: Sections 13951, 13952, 13954 and 13957, Government Code.

HISTORY

1. New section filed 9–29–88 as an emergency; operative 10–1–88 (Register 88, No. 41). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 1–30–89. For prior history, see Register 87, No. 41.
2. Readoption of emergency section filed 1–4–89; operative 1–4–89 (Register 89, No. 3). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 5–4–89.
3. Readoption of emergency section filed 5–19–89; operative 5–19–89 (Register 89, No. 21). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 9–18–89.
4. Certificate of Compliance as to 5–19–89 order including amendment of NOTE transmitted to OAL 9–14–89 and filed 10–16–89 (Register 89, No. 43).
5. Amendment of section heading, repealer and new section and amendment of NOTE filed 2–3–2003 as an emergency; operative 2–3–2003 (Register 2003, No. 6). A Certificate of Compliance must be transmitted to OAL by 6–3–2003 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 2–3–2003 order transmitted to OAL 6–2–2003 and filed 7–14–2003 (Register 2003, No. 29).
7. Change without regulatory effect renumbering former section 649.11 to section 649.8 and renumbering former section 649.15 to section 649.11, including amendment of section and NOTE, filed 12–6–2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 49).

§ 649.12. Third Party Applications.

Under the provisions of Government Code Section 13951(g), "victim" shall not include an "individual" who merely provides medical or medically related services, funeral and/or burial services, estates, or corporations. Further, the aforementioned providers, estates, or corporations shall not file claims for indemnification with the Board. All such expenses shall be paid based upon the submission of such expenses through the particular qualifying victim or his or her representative.

NOTE: Authority cited: Section 13974, Government Code. Reference: Section 13951, *Government Code.*

HISTORY

1. New section filed 9–29–88 as an emergency; operative 10–1–88 (Register 88, No. 41). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 1–30–89. For prior history, see Register 87, No. 41.
2. Readoption of emergency section filed 1–4–89; operative 1–4–89 (Register 89, No. 3). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 5–4–89.
3. Readoption of emergency section filed 5–19–89; operative 5–19–89 (Register 89, No. 21). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 9–18–89.
4. Certificate of Compliance as to 5–19–89 order including renumbering of former Section 649.12 to Sections 649.20 and 649.21, and new Section 649.12 transmitted to OAL 9–14–89 and filed 10–16–89 (Register 89, No. 43).
5. Amendment filed 12–17–99; operative 12–17–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 51).
6. Change without regulatory effect renumbering former section 649.12 to section 649.9 and renumbering former section 649.2 to section 649.12, including amendment of section and NOTE, filed 12–6–2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 49).

§ 649.13. Derivative Victims Who Previously Had Relationship with Victim Substantially Similar to Family Member.

(a) A person may be found to have a relationship with a victim that is substantially similar to that of a parent if the person provided a significant portion of the necessities of life for the victim, including but not limited to the following:

(1) financial support;
(2) food;
(3) clothing;
(4) shelter;
(5) medical expenses;
(6) educational expenses;
(7) emotional support.

(b) A person may be found to have a relationship with a victim that is substantially similar to that of a sibling if the person:

(1) lived in the same household as the victim; and

(2) was under the care of the same parent or parents, primary caretaker, or legal guardian.

(c) Factors that may be considered when determining whether a person has a relationship with a victim that is substantially similar to that of a spouse include, but are not limited to:

(1) residence in the same household for at least 6 months;
(2) joint ownership of a residence;
(3) joint ownership of a motor vehicle;
(4) use of a joint bank account;
(5) use of a joint credit card account;
(6) maintenance of a sexually or emotionally intimate relationship;
(7) a significant portion of the items listed in subsection (a) are shared with, or provided to the victim.

(d) In order to be found to have a relationship with a victim that is substantially similar to that of a spouse under subsection (c), neither party to the relationship shall have a relationship that is substantially similar to that of a spouse with any other person.

(e) A person may be found to have a relationship with a victim that is substantially similar to that of a child if the victim provided the person a significant portion of the necessities of life as listed in subsection (a).

(f) For the purpose of qualifying as a derivative victim under Government Code section 13951(c), the two–year period during which the person lived in the victim's household in a relationship substantially similar to that of a parent, sibling, spouse or child may be either cumulative or consecutive.

NOTE: Authority cited: Sections 13920 and 13974, Government Code. Reference: Sections 13951 and 13955(c), Government Code.

HISTORY

1. New section filed 9–29–88 as an emergency; operative 10–1–88 (Register 88, No. 41). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 1–30–89. For prior history, see Register 87, No. 41.
2. Readoption of emergency section filed 1–4–89; operative 1–4–89 (Register 89, No. 3). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 5–4–89.
3. Readoption of emergency section filed 5–19–89; operative 5–19–89 (Register 89, No. 21). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 9–18–89.

4. Certificate of Compliance as to 5–19–89 order including renumbering of former Section 649.13 to Section 649.22, and new Section 649.13 transmitted to OAL 9–14–89 and filed 10–16–89 (Register 89, No. 43).
5. Amendment filed 12–17–99; operative 12–17–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 51).
6. Change without regulatory effect renumbering former section 649.13 to section 649.23 and renumbering former section 651.3 to section 649.13, including amendment of section and NOTE, filed 12–6–2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 49).

§ 649.14. Victim or Derivative Victim Election.

A person shall not be eligible as both a victim and a derivative victim for the same qualifying crime.

NOTE: Authority cited: Sections 13920 and 13974, Government Code. Reference: Sections 13951 and 13952, Government Code.

HISTORY

1. Certificate of Compliance as to 5–19–89 emergency order including renumbering of former Sections 649.9(c) and 649.10(c) to Section 649.14 transmitted to OAL 9–14–89 and filed 10–16–89 (Register 89, No. 43). For prior history, see Register 87, No. 41.
2. Change without regulatory effect renumbering former section 649.14 to section 649.27 and renumbering former section 651.2 to section 649.14, including amendment of NOTE, filed 12–6–2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 49).

§ 649.15. Time for Presenting Applications.

(a) A victim or derivative victim of a qualifying crime pursuant to Government Code section 13951 shall file the application for VOC assistance within one year of the date that the qualifying crime occurred or one year after the victim attains the age of 18 years, whichever is later.

(b) An application filed after the expiration of the period of limitations set forth in paragraph (a) of this section shall not be accepted. If: (i) The application is filed within three years of the date of the qualifying crime or three years after the victim attains the age of 18 years, whichever is later; or (ii) The application is filed on or before October 3, 1994, the applicant and his or her representative will be notified that the application has not been filed in a timely manner and that they have a right to petition the board for relief on grounds that good cause exists for the late filing as specified in Section 13953(b) of the code. Petitions for relief on such grounds shall be in the form of a written statement signed under penalty of perjury that sets forth the reasons why the applicant was unable to file his or her application within the one year period of limitations specified by Government Code section 13953.

(c) Upon a timely petition for relief under subsection (e), the board may either grant relief upon the recommendation of VOC staff, or the board shall schedule a hearing to determine the existence or nonexistence of good cause and shall notify the applicant and his or her representative of the time and place of the hearing.

(d) In all cases the determination by the board as to the existence or nonexistence of good cause shall constitute the final administrative determination on the issue, subject only to a proper motion for reconsideration upon a showing of new and additional evidence not reasonably available at the time of the initial hearing. Nothing in this section shall be construed to prevent an applicant or his or her representative from filing the above stated declaration and petition for relief upon a showing of good cause simultaneously with the late application.

(e) A petition for relief from the period of limitations on grounds of good cause shall be filed with the board in writing not more than 30 days following the date notice is mailed to the applicant and his or her representative of the late filing, and shall include the statement under penalty of perjury as specified in subsection (b). An applicant failing to petition for relief in writing within the 30 days set forth herein shall have his or her application returned and shall be deemed to have waived any right to relief from the period of limitations.

(f) An applicant seeking relief from the period of limitations on the filing of a claim may, with his or her petition for relief and accompanying statement, include any corroborating documents which serve to verify the stated justifications for late filing.

(g) For purposes of the period of limitations as stated herein, the timely filing of an application, signed and dated, including the name, address and telephone number of the applicant, and the victim if different, prior to the expiration of the period of limitations shall be sufficient to perfect an application as against the period of limitations.

(h) If the application as filed is deemed to be incomplete, it shall be returned to the applicant in accordance with the terms of Section 13952(c) of the code and the period of limitations shall be deemed suspended during the 30 days specified in that section as well as during any period pending a hearing by the board as set forth therein. If no action is taken by the applicant on the application during the 30 days as specified in the code, the application shall be deemed abandoned and the period of limitations shall again commence to run.

(i) An incomplete application returned to the applicant with notice as to the deficiency as specified in Section 13952(c) shall be deemed received by the applicant five days after it is deposited in the United States mail properly addressed and postage prepaid. Return of information sufficient to complete the application shall be deemed filed on the date postmarked by the United States Postal Service or other carrier, postage prepaid and properly addressed.

NOTE: Authority cited: Section 13974, Government Code. Reference: Sections 13953 and 13954, Government Code.

HISTORY

1. Certificate of Compliance as to 5–19–89 emergency order including renumbering and amendment of former Section 649.9(d) to Section 649.15 transmitted to OAL 9–14–89 and filed 10–16–89 (Register 89, No. 43). For prior history, see Register 87, No. 41.
2. Amendment filed 12–17–99; operative 12–17–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 51).
3. Change without regulatory effect renumbering former section 649.15 to section 649.11 and renumbering former section 649.1 to section 649.15, including amendment of section and NOTE, filed 12–6–2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 49).

§ 649.16. Timely Filing of Application for Derivative Victim.

(a) The period of limitations for filing an application under section 649.15 shall be tolled for derivative victims when an application is timely filed under section 649.15 by a victim or on behalf of a victim for the same qualifying crime.

(b) Board staff need not review, verify, or act upon an application under Government Code section 13952 and 13954 from a derivative victim whose period of limitations for an application under section 649.15 was tolled under subsection (a) until a request for monetary assistance or reimbursement is submitted by or on behalf of the derivative victim.

NOTE: Authority cited: Sections 13920 and 13974, Government Code. Reference: Sections 13952 and 13953, Government Code.

HISTORY

1. Certificate of Compliance as to 5–19–89 emergency order including renumbering and amendment of a former provision of Section 649.9(a)(8) to Section 649.16 transmitted to OAL 9–14–89 and filed 10–16–89 (Register 89, No. 43).
2. Amendment filed 12–17–99; operative 12–17–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 51).
3. Change without regulatory effect renumbering former section 649.16 to section 649.30 and renumbering former section 649.1.1 to section 649.16, including amendment of section and NOTE, filed 12–6–2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 49).

§ 649.17. Collateral Benefits. [Renumbered]

HISTORY

1. Certificate of Compliance as to 5–19–89 emergency order including renumbering and amendment of former Sections 649.9(b)(5) and 649.10(b)(5) to Section 649.17 transmitted to OAL 9–14–89 and filed 10–16–89 (Register 89, No. 43). For prior history, see Register 89, No. 21.
2. Amendment filed 12–17–99; operative 12–17–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 51).
3. Change without regulatory effect renumbering former section 649.17 to section 649.31 filed 12–6–2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 49).

§ 649.18. Objection to Direct Payment. [Renumbered]

HISTORY

1. Certificate of Compliance as to 5-19-89 emergency order including renumbering and amendment of former Sections 649.9 (A)(9) and 649.10(a)(7) to Section 649.18 transmitted to OAL 9-14-89 and filed 10-16-89 (Register 89, No. 43). For prior history, see Register 89, No. 21.
2. Amendment filed 12–17–99; operative 12–17–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 51).

3. Change without regulatory effect renumbering former section 649.18 to section 649.26 filed 12–6–2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 49).

§ 649.20. Consideration of Applications.

(a) Verification of applications and supplemental claims shall take place within the average 90 days prescribed by Section 13958 of the code.

(b) Following the verification process, VOC staff shall make a recommendation to the Board regarding the application or supplemental claim. Staff may recommend that the Board allow the application or supplemental claim, disallow the application or supplemental claim, or allow the application or supplemental claim in part and disallow the application or supplemental claim in part.

(c) If the VOC staff recommends that the Board allow the application or supplemental claim, the matter shall be placed on the Board's consent hearing agenda. Notice of the hearing and staff recommendation for approval shall be given.

(d) In the event that VOC staff recommends disallowance of an application or supplemental claim, the staff of VOC shall prepare a "Notice of Staff Recommended Disallowance," or in the case of approval of payment in some amount less than that for which the application or supplemental claim was made, a "Notice of Staff Recommended Partial Disallowance." Such notice shall include a statement as to why the matter is recommended for disallowance and shall be mailed to the affected applicant and his or her representative at their last known address of record as set forth on the application or most recent supplemental claim on file with the VOC, or more current notice of address change from the applicant or his or her representative. Such notice shall be mailed within the average 90 days prescribed by Section 13958 of the code. Every "Notice of Staff Recommended Disallowance" or "Notice of Staff Recommended Partial Disallowance" shall contain the following statement in bold upper case type:

"THIS STAFF RECOMMENDED DISALLOWANCE DOES NOT CONSTITUTE A FINAL ADMINISTRATIVE DETERMINATION BY THE VICTIM COMPENSATION AND GOVERNMENT CLAIMS BOARD (VCGCB) TO DENY YOUR APPLICATION OR CLAIM. IT MERELY CONSTITUTES NOTICE THAT THE STAFF OF THE BOARD FOLLOWING ITS VERIFICATION PROCESS HAS RECOMMENDED DISALLOWANCE OR PARTIAL DISALLOWANCE. THIS RECOMMENDATION IS SUBJECT TO HEARING BY THE VCGCB. TO PARTICIPATE IN SUCH HEARING AND TO ENSURE A FULL DISCUSSION OF ALL RELEVANT ISSUES YOU SHOULD FOLLOW THE PROCEDURES SET FORTH IN THIS NOTICE."

(e) If the application or supplemental claim is recommended by staff for disallowance or partial disallowance, the applicant shall have 45 days from the date of such notice to request in writing, that the matter be set for hearing to contest the staff recommendation. Nothing in this section shall be construed to prevent an applicant or his or her representative from communicating with VOC staff during the period between notice of disallowance and the date of hearing in order to supply additional information. Nothing in this section shall be construed to prevent VOC staff from amending their initial recommendation where additional documentation or information provides the necessary evidence to recommend approval of an application or supplemental claim. All written requests for hearing shall be mailed or delivered to the headquarters office of the Victims of Crime Program at Sacramento, California, the address for which shall be provided on this notice. Failure to request a hearing within the stated 45 days shall result in the matter being placed on the board's consent hearing agenda with a staff recommendation for disallowance or partial disallowance. Such items may be removed from the consent agenda and made subject to a hearing only upon request by a member of the board. Board staff shall notify the applicant or his or her representative of such hearing.

(f) Upon receipt of a written request for hearing as specified in Paragraph (e) of this section and after considering the convenience to the applicant as to location for hearing, the staff of the board shall set a hearing to consider the disputed application or supplemental claim, and shall notify the applicant or his or her representative of the hearing.

NOTE: Authority cited: Section 13974, Government Code. Reference: Sections 13956, 13958, 13959 and 13960, Government Code.

HISTORY

1. Certificate of Compliance as to 5–19–89 emergency order including renumbering and amendment of provisions of former Section 649.12 to Section 649.20 transmitted to OAL 9–14–89 and filed 10–16–89 (Register 89, No. 43). For prior history, see Register 89, No. 21.
2. Amendment of subsections (c)–(f) filed 10–8–97 as an interim regulation pursuant to Government Code section 11400.20; operative 10–8–97 (Register 97, No. 41). Interim regulations expire on 12–31–98 unless earlier amended or repealed.
3. Interim regulation transmitted to OAL 12–31–98 as a permanent rulemaking with amendments and filed 2–17–99; operative 2–17–99 pursuant to Government Code section 11400.20 (Register 99, No. 12).
4. Amendment filed 12–17–99; operative 12–17–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 51).
5. Change without regulatory effect amending subsections (a) and (d) and amending NOTE filed 12–6–2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 49).

§ 649.21. Requests for Reconsideration.

Requests for reconsideration filed by applicants or their representatives in accordance with Section 13959(i) of the code shall be accepted by the board only after the board has acted on the application or supplemental claim at a hearing following a "Notice of Staff Recommended Disallowance" or a "Notice of Staff Recommended Partial Disallowance." Requests for reconsideration shall not be granted unless the applicant produces new and additional evidence not reasonably available to the applicant at the time of the hearing. Nothing in this section shall be construed to prevent the board from granting reconsideration on its own motion.

NOTE: Authority cited: Section 13974, Government Code. Reference: Sections 13954, 13956, 13959 and 13959(i), Government Code.

HISTORY

1. Certificate of Compliance as to 5–19–89 emergency order including renumbering of former Section 649.12(h) to Section 649.21 transmitted to OAL 9–14–89 and filed 10–16–89 (Register 89, No. 43). For prior history, see Register 89, No. 21.
2. Amendment filed 12–17–99; operative 12–17–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 51).
3. Change without regulatory effect amending section and NOTE filed 12–6–2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 49).

§ 649.22. Supplemental Claim Process.

(a) All supplemental claims shall be deemed complete within the meaning of Section 13952(c)(2) of the code only if the applicant or authorized representative provides the following information:

(1) The name of the applicant, and if different the name of the victim or derivative victim.

(2) The mailing address and telephone number of the applicant, or any named representative of the applicant if such information has changed since the filing of the application.

(3) The claim or file number assigned by VOC to the application filed on behalf of the victim or derivative victim.

(4) A statement that invoices for services received which are appended to the supplemental claim are for services directly related to injuries sustained as a result of the qualifying crime and for no other reason and that such services were actually received by the victim or derivative victim.

(5) If, since the date of the application, commencement of a civil action is contemplated or has been filed, a statement whether the victim, the victim's survivors, or derivative victim have commenced or intend to commence a civil action to recover monetary damages from the perpetrator or perpetrators of the qualifying crime or from any other party in connection with the qualifying crime, along with the name, telephone number and address of any attorney representing the applicant, victim, or derivative victim in such civil proceedings.

(6) In the event that collateral benefits have been applied for or received since the time of filing the application, a disclosure as to these collateral benefits or assistance.

(b) In addition to the above, a request for supplemental assistance shall contain the following documentation attached to the supplemental claim:

(1) If medical or mental health expenses are claimed to have been incurred as a direct result of the qualifying crime, an itemized statement from the professional provider for all medical or mental health expenses claimed, including the license number of the professional certificate issued by the State of California or other jurisdiction to the medical or mental health practitioner providing the service as well as his or her business address and telephone number. If mental health psychotherapy services were provided, a designation as to whether any counseling or psychotherapy provided was in an individual, family or group setting. Providers of services who are authorized by law to offer such services as part of their on–going business activity, but who are not required to obtain a professional or occupational license must provide either their social security number, or their Federal Employer Identification Number.

(2) If loss of income is claimed to have occurred as a direct result of the qualifying crime and the applicant has not previously made a claim for loss of income, he or she shall produce evidence of income loss as well as a statement of disability as required by Section 649.7(b)(2) of these regulations. Where documentation of income loss has previously been submitted with the application and no change as to the level of income or earnings has occurred, no further documentation of income loss shall be required to be submitted. Where a statement of disability was previously submitted with the application, but the prognosis for recovery has changed or the term of disability is changed, a new statement of disability shall be required, to be signed by the treating medical or mental health provider. Such statement of disability shall provide that information as is required by Section 649.7(b)(2) of these regulations.

(3) If funeral or burial expenses are claimed as a direct result of the qualifying crime, an itemized statement for all funeral or burial expenses incurred as of the date of the supplemental claim and not previously submitted.

(4) If rehabilitative services are claimed, the applicant shall produce that evidence of need, and documentation for rehabilitation as specified in Section 649.24(c) of these regulations.

(c) Providers may submit the supplemental claims directly to the board in only the following two instances:

(1) When the victim or derivative victim is a minor; or

(2) When the provider certifies that they are unable to obtain the applicant's signature, they performed the services billed and the services are related to the qualifying crime.

NOTE: Authority cited: Section 13974, Government Code. Reference: Sections 13951, 13952, 13954, 13957 and 13957.2, Government Code.

HISTORY

1. Certificate of Compliance as to 5–19–89 emergency order including renumbering and amendment of former Section 649.13 to Section 649.22 transmitted to OAL 9–14–89 and filed 10–16–89 (Register 89, No. 43). For prior history, see Register 89, No. 21.
2. Amendment filed 12–17–99; operative 12–17–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 51).
3. Change without regulatory effect renumbering former section 649.22 to section 649.10 and renumbering former section 649.10 to section 649.22, including amendment of section and NOTE, filed 12–6–2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 49).

§ 649.23. Certification.

All applications and supplemental claims shall be certified under penalty of perjury by the victim or derivative victim where the victim or derivative victim is the applicant, or shall be attested to under information and belief if completed by an applicant other than the victim or derivative victim, by a provider or by an authorized representative.

NOTE: Authority cited: Sections 13952 and 13974, Government Code. Reference: Sections 13952, 13952.5 and 13954, Government Code.

HISTORY

1. Change without regulatory effect renumbering former section 649.13 to section 649.23, including amendment NOTE, filed 12–6–2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 49). For prior history of section 649.23, see Register 2006, No. 4.

§ 649.24. Authorized Indemnification.

(a) Any cash payments made in response to an application or supplemental claim, arising out of the same crime, shall not exceed the monetary limits permitted by statute for a single application filed pursuant thereto.

(b) Personal Property. Except as provided for in Government Code sections 13951(e) and 13957(a)(1), the Board shall not indemnify a victim for loss of money or loss or damage to personal property sustained in the crime giving rise to the application.

(c) Rehabilitative Services. Cash payments for job retraining or similar employment–oriented services will be paid to or on behalf of the person sustaining the physical injury, or in the event of his death or continuing disability, only to or on behalf of those persons who were directly dependent on him for their major support. Persons requesting cash payment for rehabilitative services must clearly indicate the type of services or retraining contemplated, the intended provider of the services, the cost thereof, and the need for the services. The applicant must also certify, to the satisfaction of the Board, that such assistance is not available from some other tax–supported program.

NOTE: Authority cited: Sections 13920 and 13974, Government Code. Reference: Sections 13957 and 13957.5, Government Code.

HISTORY

1. Change without regulatory effect renumbering former section 649.3 to section 649.24, including amendment of section and NOTE, filed 12–6–2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 49). For prior history of section 649.24, see Register 2006, No. 4.

§ 649.25. Reimbursement Calculation.

The amount of reimbursement paid by the Board shall not exceed the maximum rate set by the Board, if any, less the amount of reimbursement available from other sources.

NOTE: Authority cited: Section 13920, Government Code. Reference: Sections 13951 and 13957(b), Government Code.

HISTORY

1. Change without regulatory effect renumbering former section 649.71 to section 649.25, including amendment of NOTE, filed 12–6–2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 49). For prior history of section 649.25, see Register 2006, No. 4.

§ 649.26. Objection to Direct Payment.

The Board shall inform the victim or derivative victim of his or her right to object to direct payments by VOC to providers of services in accordance with Section 13957.7(c)(1) of the code. In the event that the victim or derivative victim asserts such right the VOC shall reimburse pecuniary loss to the victim or derivative victim only in amounts equal to sums actually paid out by the victim or derivative victim to the service provider and only upon submission by the victim, the victim's survivors, or derivative victim of evidence of such payments. Following such an objection, direct payment shall be made to the provider only upon a demonstration of good cause as determined by the board.

NOTE: Authority cited: Section 13974, Government Code, Reference: Section 13957.7, Government Code.

HISTORY

1. Change without regulatory effect renumbering former section 649.18 to section 649.26, including amendment of section and NOTE, filed 12–6–2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 49). For prior history of section 649.26, see Register 2006, No. 4.

§ 649.27. Third Party Verification.

In all cases where VOC requests verification from hospitals, physicians, law enforcement officials or other interested parties and these third parties fail to return the requested information within 10 (ten) days as specified in Section 13954(a) of the code, the board may through its staff, review the application and all attachments as filed by the applicant and may in the exercise of its sound judgment deem the application to be verified based solely on a review of those documents.

NOTE: Authority cited: Sections 13952.5, 13954 and 13974, Government Code. Reference: Sections 13952.5 and 13954, Government Code.

HISTORY

1. Change without regulatory effect renumbering former section 649.14 to section 649.27, including amendment of section and NOTE, filed 12–6–2007 pursuant

to section 100, title 1, California Code of Regulations (Register 2007, No. 49). For prior history of section 649.27, see Register 2006, No. 4.

§ 649.28. Audit of Mental Health Counseling Providers.

(a) A provider of outpatient mental health counseling related services who receives payment from, or whose services were reimbursed by, the Victim Compensation Program shall be subject to a clinical or fiscal audit, or both, to ensure that treatment and reimbursement were authorized by law.

(b) A provider shall make all necessary clinical and fiscal records available to Board staff for review upon request for up to three years after the date that reimbursement was paid.

NOTE: Authority cited: Section 13920(c), Government Code. Reference: Sections 13954, 13957(a)(2) and 13957.2(a), Government Code.

HISTORY

1. New section filed 10–10–2003 as an emergency; operative 10–10–2003 (Register 2003, No. 41). A Certificate of Compliance must be transmitted to OAL by 2–9–2004 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 10–10–2003 order transmitted to OAL 2–6–2004 and filed 3–23–2004 (Register 2004, No. 13).

§ 649.30. Lien.

In all cases the victim or derivative victim shall execute a lien in favor of the fund, which lien shall be submitted with the application and may be utilized by the VOC to seek reimbursement in the event that subsequent civil proceedings are commenced and successfully prosecuted.

NOTE: Authority cited: Section 13974, Government Code. Reference: Section 13963, Government Code.

HISTORY

1. Change without regulatory effect renumbering former section 649.16 to section 649.30, including amendment of NOTE, filed 12–6–2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 49).

§ 649.31. Collateral Benefits.

In the event that other collateral benefits are disclosed as required during verification, the applicant shall obtain and provide a written explanation of such benefits from the insurer, or benefit program setting forth a determination of eligibility as regards the victim, the victim's survivors, or derivative victim as well as the dollar amount of assistance or reparations to which the victim, the victim's survivors, or derivative victim is entitled. In the event that the applicant is unable to obtain an explanation of benefits, the VOC or joint powers victim witness center shall take steps to obtain such explanation of benefits and the application or portion of the application governed by such explanation of benefits shall be treated as a "zero award" until such time as the explanation of benefits is received.

NOTE: Authority cited: Section 13974, Government Code. Reference: Sections 13951, 13952, 13954 and 13957(b), Government Code.

HISTORY

1. Change without regulatory effect renumbering former section 649.17 to section 649.31, including amendment of NOTE, filed 12–6–2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 49).

§ 649.34. Eligibility of Law Enforcement Officers.

A law enforcement officer who is a victim of a qualifying crime while acting within the course and scope of the officer's employment shall receive assistance for which the officer is otherwise eligible.

NOTE: Authority cited: Sections 13920 and 13974, Government Code. Reference: Sections 13951 and 13955, Government Code.

HISTORY

1. Change without regulatory effect renumbering former section 651.4 to section 649.34, including amendment of NOTE, filed 12–6–2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 49).

§ 649.35. Duty of Local Law Enforcement Agencies.

Notice of the Victims of Crime Act shall be given by local law enforcement agencies either in person or by mail, or in conjunction with local victim witness assistance centers, to all victims of crimes or their dependents at the time of the incident or as soon as possible thereafter. The notice as required by Government Code Section 13962(b) shall be given in accordance with the written procedures developed by the agency pursuant to Section 649.36 of this article. In addition, new officers shall be advised by their superiors upon entering service of the particulars of the VOC Program. Instruction concerning the program shall be made a part of the training curriculum for all trainee officers.

NOTE: Authority cited: Section 13920, Government Code. Reference: Section 13962, Government Code.

HISTORY

1. Change without regulatory effect renumbering former section 649.7 to section 649.35, including amendment of section and NOTE, filed 12–6–2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 49).

§ 649.36. Victims of Crime Liaison Officer.

Each local law enforcement agency shall designate a Victims of Crime Liaison Officer. The State Board of Control shall be advised of the name, business address and telephone number of the person appointed. In carrying out the agency's responsibility under California Government Code Section 13962(b) and Section 649.35 of this article, the Liaison Officer shall devise and implement written procedures whereby victims, or their dependents or family, are notified and provided forms for filing under the VOC Program. These procedures shall be available for examination, upon request, by the board. It shall also be the responsibility of the Liaison Officers or their designees to respond to inquiries from interested persons concerning procedures for filing a claim under this program. Liaison Officers or their designees shall provide to interested persons applications supplied by the board explaining the VOC Program.

NOTE: Authority cited: Section 13920, Government Code. Reference: Section 13962, Government Code.

HISTORY

1. Change without regulatory effect renumbering former section 649.8 to section 649.36, including amendment of section and NOTE, filed 12–6–2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 49).

§ 649.37. Proof of the Qualifying Crime.

An applicant has the burden of proving each element of a qualifying crime.

NOTE: Authority cited: Sections 13920 and 13974, Government Code. Reference: Sections 13951, 13956 and 13959, Government Code.

HISTORY

1. Change without regulatory effect renumbering former section 653.4 to section 649.37, including amendment of NOTE, filed 12–6–2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 49).

§ 649.38. Evidence of the Qualifying Crime.

(a) A conviction shall be sufficient proof that a crime occurred.

(b) Significant weight may be given to the evidence from and conclusions of a law enforcement agency after investigation of the qualifying crime when determining whether or not a qualifying crime occurred.

(c) Factors that may be considered as evidence of a qualifying crime include, but are not limited to:

(1) an admission of guilt to law enforcement; and

(2) the filing of a criminal charge for the qualifying crime.

(d) Medical or mental health records alone may not be sufficient evidence that a qualifying crime occurred.

NOTE: Authority cited: Sections 13920 and 13974, Government Code. Reference: Sections 13952, 13956 and 13959, Government Code.

HISTORY

1. Change without regulatory effect renumbering former section 653.5 to section 649.38, including amendment of NOTE, filed 12–6–2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 49).

§ 649.39. Emotional Injury.

A victim or derivative victim may be compensated for emotional injury if the victim also sustained one of the following:

(a) physical injury; or

(b) threat of physical injury.

NOTE: Authority cited: Sections 13920 and 13974, Government Code. Reference: Section 13955(f), Government Code.

HISTORY

1. Change without regulatory effect renumbering former section 652.1 to section 649.39, including amendment of NOTE, filed 12–6–2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 49).

§ 649.40. Examples of Threat of Physical Injury.

A threat of physical injury includes, but is not limited to the following situations:

(a) the victim was directly threatened with a weapon:

(b) the victim was within sight of a person brandishing a weapon and reasonably felt threatened for his or her own safety;

(c) the victim was directly threatened verbally with serious bodily injury and there was a reasonable probability that:

(1) the threat would be carried out; and

(2) physical injury would result if the threat were carried out.

NOTE: Authority cited: Sections 13920 and 13974, Government Code. Reference: Section 13955, Government Code.

HISTORY

1. Change without regulatory effect renumbering former section 652.2 to section 649.40, including amendment of NOTE, filed 12–6–2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 49).

§ 649.41. Acts Constituting One Qualifying Crime.

(a) An act or series of acts by a perpetrator or perpetrators that is a continuing series of events, regardless of the time period over which the acts occur, may be considered one crime for the purpose of filing an application or eligibility.

(b) The following shall constitute one crime for the purpose of filing an application or for eligibility:

(1) the same or similar crime is repeatedly committed against the same victim over a period of time by a single perpetrator;

(2) the same or similar crime is repeatedly committed against the same victim over a period of time by more than one perpetrator acting in concert or with the knowledge of the conduct of the other perpetrator or perpetrators;

(3) a series of crimes is committed against the same victim by one or more perpetrators over a period of time with a continuity of purpose.

(c) An act or series of acts that is one crime under this section that continues after an application is submitted constitutes one crime for the purpose of filing an application or for eligibility.

(d) A qualifying crime may have more than one victim or derivative victim.

(e) When there is more than one victim of the same acts described in subsection (b)(1), (2) or (3), a victim shall not be eligible as both a victim and a derivative victim for the same acts.

NOTE: Authority cited: Sections 13920 and 13974, Government Code. Reference: Section 13951, Government Code.

HISTORY

1. Change without regulatory effect renumbering former section 653.3 to section 649.41, including amendment of NOTE, filed 12–6–2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 49).

§ 649.42. Date of Qualifying Crime.

The date of a qualifying crime that is comprised of a series of acts under section 649.41 is the date on which the last act occurred prior to the date of the application.

NOTE: Authority cited: Sections 13920 and 13974, Government Code. Reference: Section 13951, Government Code.

HISTORY

1. Change without regulatory effect renumbering former section 653.1 to section 649.42, including amendment of section and NOTE, filed 12–6–2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 49).

§ 649.43. Evidence of a Child Sexual or Physical Abuse Qualifying Crime.

(a) Factors that shall be considered evidence of a child sexual or physical abuse qualifying crime include, but are not limited to:

(1) a sustained juvenile court dependency petition containing allegations of sexual or physical abuse, unless the court finds that the allegations of sexual or physical abuse did not occur;

(2) medical or physical evidence consistent with child sexual or physical abuse;

(3) a written or oral report from a law enforcement agency or a child protective services agency concluding that child sexual or physical abuse occurred;

(4) a credible witness corroborated the child sexual or physical abuse;

(5) a juvenile court order removed the child from the home because of sexual or physical abuse;

(6) criminal charges of child sexual or physical abuse were filed.

(b) Factors that may be considered evidence of a child sexual or physical abuse qualifying crime include, but are not limited to:

(1) a mental health evaluation concluded that child sexual or physical abuse occurred;

(2) the child victim's statement to a law enforcement or child protective services staff;

(3) evidence of behavior consistent with child sexual or physical abuse;

(4) a final superior court order that finds that child sexual or physical abuse occurred.

(c) A report under subsection (a)(3) shall contain all of the following information:

(1) name, telephone number and title of the person making the report;

(2) specific facts that form the basis of the conclusion that a crime occurred;

(3) citation to the relevant criminal statute for the crime that occurred.

NOTE: Authority cited: Sections 13920 and 13974, Government Code. Reference: Sections 13954, 13956 and 13959, Government Code.

HISTORY

1. Change without regulatory effect renumbering former section 654.2 to section 649.43, including amendment of NOTE, filed 12–6–2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 49).

§ 649.44. Evidence of a Domestic Violence Qualifying Crime.

(a) Factors that may be considered as evidence of a domestic violence qualifying crime include, but are not limited to:

(1) the perpetrator was prosecuted for the qualifying crime;

(2) the perpetrator was enrolled in a batterers' program or its predecessor domestic violence diversion program as a result of the qualifying crime;

(3) a report from law enforcement concluded that a domestic violence crime was committed against the victim;

(4) a report from a battered women's program corroborates the allegation of domestic violence;

(5) medical records document injuries consistent with the allegation of domestic violence;

(6) a law enforcement officer obtained an emergency protective order under Family Code section 6250;

(7) a report from a law enforcement officer or prosecuting attorney concluded that a crime of domestic violence occurred;

(8) a violation of probation due to a domestic violence qualifying crime against the victim.

(b) For the purpose of this section, "domestic violence" shall have the same meaning as in Penal Code section 13700(b).

NOTE: Authority cited: Sections 13920 and 13974, Government Code. Reference: Sections 13954, 13956 and 13959, Government Code.

HISTORY

1. Change without regulatory effect renumbering former section 654.4 to section 649.44, including amendment of NOTE, filed 12–6–2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 49).

§ 649.45. Presumption of Physical Injury in a Domestic Violence Qualifying Crime.

(a) A minor is presumed to have sustained physical injury as a result of a domestic violence qualifying crime if the child witnessed a domestic violence qualifying crime.

(b) A minor witnessed a domestic violence qualifying crime if the minor saw or heard an act constituting a domestic violence qualifying crime.

(c) Factors that may be considered as evidence that a minor witnessed an act constituting a domestic violence qualifying crime include, but are not limited to:

(1) the minor placed a 911 call;

(2) a report from a counselor at a domestic violence agency concluded that the minor witnessed an act constituting a domestic violence qualifying crime;

(3) a report from an eyewitness corroborated that the minor witnessed an act constituting a domestic violence qualifying crime;

(4) a restraining order required the perpetrator to stay away from the minor and a declaration supporting the restraining order stated that the minor was the victim of, or was threatened with, physical injury;

(5) the minor's reliable statements;

(6) other credible evidence.

NOTE: Authority cited: Sections 13920 and 13974, Government Code. Reference: Section 13951, Government Code.

HISTORY

1. Change without regulatory effect renumbering former section 654.5 to section 649.45, including amendment of NOTE, filed 12–6–2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 49).

§ 649.46. Presumption of Physical Injury in a Child Abduction Qualifying Crime.

The presumption of physical injury under Government Code section 13955(f)(3)(D) for violations of Penal Code sections 278 or 278.5 requires that the deprivation of custody continue for at least 30 consecutive days.

NOTE: Authority cited: Sections 13920 and 13974, Government Code. Reference: Section 13955, Government Code.

HISTORY

1. Change without regulatory effect renumbering former section 654.3 to section 649.46, including amendment of section and NOTE, filed 12–6–2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 49).

§ 649.47. Evidence of the Qualifying Crime of Stalking.

(a) Stalking (Penal Code section 646.9) may be a qualifying crime if the credible threat required by the crime was directed at the victim.

(b) Evidence of a qualifying crime of stalking (Penal Code section 646.9) includes, but is not limited to law enforcement's identification of the victim in the application as the victim in the crime report.

NOTE: Authority cited: Sections 13920 and 13974, Government Code. Reference: Sections 13951, 13954 and 13956, Government Code.

HISTORY

1. Change without regulatory effect renumbering former section 654.6 to section 649.47, including amendment of NOTE, filed 12–6–2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 49).

§ 649.50. Involvement in a Vehicle–Related Qualifying Crime.

(a) A victim or derivative victim who was the driver of a vehicle or water vehicle may be found to have been involved in the events leading to the qualifying crime if one of the following was present:

(1) the victim or derivative victim was driving the vehicle with a blood alcohol content exceeding the legal limit; or

(2) the victim or derivative victim was driving while under the influence of drugs.

(b) If any of the factors listed in subsection (a) caused the qualifying crime, the application may be denied for participation in the qualifying crime under section 649.51.

(c) A victim or derivative victim who was the passenger in a vehicle driven by a person under the influence of alcohol or drugs may be found to have been involved in the events leading to the vehicle–related qualifying crime if one of the following was present:

(1) the victim or derivative victim knew or reasonably should have known that the driver was under the influence of alcohol or drugs; or

(2) the victim or derivative victim was under the influence of alcohol or drugs and if sober should have reasonably known that the driver was under the influence of alcohol or drugs.

(d) Subsection (c) shall not apply if:

(1) the victim is under 14 years of age; or

(2) the victim is between 14 and 17 years of age and the driver of the vehicle was the parent or guardian of the victim.

(e) Subsection (c) may not apply if the victim is between 14 and 17 years of age and the driver of the vehicle is an adult who had responsibility for the victim other than the victim's parent or guardian.

(f) A victim or derivative victim may be found to have been involved in the events leading to the qualifying crime of a hit and run (Vehicle Code section 20001) if both of the following are present:

(1) the victim or derivative victim acted in a blatant, wrongful or provoking manner; and

(2) the victim's or derivative victim's conduct contributed to the events leading to the qualifying crime.

(g) Significant weight may be given to the evidence from and conclusions of a law enforcement agency after investigation of the qualifying crime when evaluating the factors listed in subsections (a) and (f).

NOTE: Authority cited: Sections 13920 and 13974, Government Code. Reference: Section 13955, Government Code.

HISTORY

1. Change without regulatory effect renumbering former section 656.6 to section 649.50, including amendment of section and NOTE, filed 12–6–2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 49).

§ 649.51. Participation in the Qualifying Crime.

(a) A victim or derivative victim who knowingly and willingly participated in the commission of the qualifying crime shall not be eligible for assistance.

(1) This subsection shall not apply if the qualifying crime is a violation of Penal Code section 261.5 [Unlawful sexual intercourse with a minor] occurring on or after January 1, 1999.

(b) A derivative victim is not eligible for assistance if the victim of the same qualifying crime knowingly and willingly participated in the commission of the qualifying crime.

(c) A victim or derivative victim knowingly and willingly participated in the commission of the qualifying crime if the victim or derivative victim was any of the following:

(1) a perpetrator;

(2) a co–conspirator; or

(3) an accomplice.

(d) Significant weight may be given to the evidence from and conclusions of a law enforcement agency after investigation of the qualifying crime when determining whether the victim or derivative victim participated in the commission of the qualifying crime.

NOTE: Authority cited: Sections 13920 and 13974, Government Code. Reference: Section 13956, Government Code.

HISTORY

1. Change without regulatory effect renumbering former section 655.1 to section 649.51, including amendment of NOTE, filed 12–6–2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 49).

§ 649.52. Involvement in the Events Leading to the Qualifying Crime.

(a) An application from a victim may be denied, in whole or in part, because of the involvement of the victim in the events leading to the qualifying crime.

(b) An application from a derivative victim may be denied, in whole or in part, because of the involvement of the victim or derivative victim in the events leading to the qualifying crime.

(c) Factors that may be considered when determining whether the victim or derivative victim was involved in the events leading to the qualifying crime include, but are not limited to:

(1) the conduct of the victim or derivative victim caused, resulted in, or reasonably could have led to the qualifying crime;

(2) the conduct of the victim or derivative victim was negligent and placed himself or herself, or another person in a position to be injured or victimized;

(3) the victim or derivative victim intentionally created, entered, or stayed in a situation or environment in which it was reasonably foreseeable that he or she would be victimized;

(4) the level of responsibility of the victim or derivative victim for the qualifying crime;

(5) the qualifying crime was a reasonably foreseeable consequence of the conduct of the victim or derivative victim;

(6) the reasonable ability of the victim or derivative victim to avoid the involvement in the events leading to the qualifying crime;

(7) the extent of harm to the victim or derivative victim resulting from the crime;

(8) future harm to the victim or derivative victim that may occur if assistance is not awarded.

(d) A victim or derivative victim need not participate in the qualifying crime or engage in conduct that is illegal in order to be found to be involved in the events leading to the qualifying crime.

(e) Significant weight may be given to the evidence from and conclusions of a law enforcement agency after investigation of the qualifying crime when determining whether the victim or derivative victim was involved in the events leading to the qualifying crime.

(f) Factors that shall be considered when determining whether a minor victim or derivative victim was involved in the events leading to a qualifying crime under subsection (a) or (b) include, but are not limited to:

(1) age;

(2) physical condition;

(3) psychological or emotional condition;

(4) compelling health or personal safety factors;

(5) reasonable fear of retaliation or harm to self or family.

(g) The eligibility of a minor derivative victim of a domestic violence qualifying crime shall not be affected by the victim's involvement in the events leading to the domestic violence qualifying crime.

NOTE: Authority cited: Sections 13920 and 13974, Government Code. Reference: Section 13956, Government Code.

HISTORY

1. Change without regulatory effect renumbering former section 656.1 to section 649.52, including amendment of NOTE, filed 12–6–2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 49).

§ 649.53. Involvement in the Qualifying Crime Due to Mutual Combat.

(a) Factors that may be considered when determining whether the victim or derivative victim was involved in the events leading to the qualifying crime as a result of mutual combat include, but are not limited to:

(1) there was an implicit or explicit agreement to fight;

(2) the victim or derivative victim made a deliberate threat;

(3) the victim or derivative victim engaged in conduct indicating the intention of carrying out a deliberate threat;

(4) the deliberate conduct of the victim or derivative victim reasonably provoked the other party into starting a physical altercation that lead to the qualifying crime;

(5) the victim or derivative victim initiated a physical altercation that lead to the qualifying crime.

NOTE: Authority cited: Sections 13920 and 13974, Government Code. Reference: Sections 13956 and 13964, Government Code.

HISTORY

1. Change without regulatory effect renumbering former section 656.4 to section 649.53, including amendment of NOTE, filed 12–6–2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 49).

§ 649.54. Involvement in the Qualifying Crime Due to Illegal Drug–Related Activity.

(a) Involvement in the events leading to the qualifying crime by the victim or derivative victim may be found if the victim or derivative victim was either of the following:

(1) involved in an illegal drug transaction at the time the qualifying crime occurred; or

(2) victimized as a result of involvement in a prior illegal drug transaction.

(b) An illegal drug transaction includes, but is not limited to the following:

(1) the illegal purchase of a drug;

(2) the illegal sale of a drug;

(3) the illegal possession of a drug for sale;

(4) the illegal delivery or transportation of a drug;

(5) the illegal manufacture of a drug.

(c) Significant weight may be given to the evidence from and conclusions of a law enforcement agency after investigation of the qualifying crime when determining whether the victim or derivative victim was involved in the events leading to the qualifying crime under subsection (a).

NOTE: Authority cited: Sections 13920 and 13974, Government Code. Reference: Section 13956, Government Code.

HISTORY

1. Change without regulatory effect renumbering former section 656.2 to section 649.54, including amendment of NOTE, filed 12–6–2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 49).

§ 649.55. Involvement in the Qualifying Crime Due to Gang Involvement.

(a) Involvement in the events leading to the qualifying crime by the victim or derivative victim may be found if the victim or derivative victim was involved in and was injured from a qualifying crime that was a result of gang activity or prior gang activity in which the victim or derivative victim participated.

(b) Gang activity may include, but is not limited to the following:

(1) gang initiation;

(2) gang retaliation;

(3) gang fighting;

(4) intentionally provoking gang–related activity.

(c) Significant weight may be given to the evidence from and conclusions of a law enforcement agency after investigation of the qualifying crime when determining whether the victim or derivative victim was involved in the events leading to the qualifying crime under subsection (a).

(d) Gang membership alone shall not be sufficient for a finding of involvement in the events leading to the qualifying crime under subsection (a).

NOTE: Authority cited: Sections 13920 and 13974, Government Code. Reference: Section 13956, Government Code.

HISTORY

1. Change without regulatory effect renumbering former section 656.3 to section 649.55, including amendment of NOTE, filed 12–6–2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 49).

§ 649.56. Involvement in the Qualifying Crime of Prostitution.

(a) Involvement in the events leading to the qualifying crime of prostitution by the victim or derivative victim may be found if the victim or derivative victim was:

(1) engaged in activity related to prostitution; and

(2) the crime occurred as a direct result of the activity related to prostitution.

(b) Activity related to prostitution includes, but is not limited to the following:

(1) soliciting or participating in the solicitation of an act of prostitution;

(2) purchasing or participating in the purchase of an act of prostitution;

(3) engaging in an act of prostitution;

(4) pimping as defined in Penal Code section 266h;

(5) pandering as defined in Penal Code section 266i.

(c) For the purpose of this section, prostitution has the same meaning as defined in Penal Code section 647(b).

NOTE: Authority cited: Sections 13920 and 13974, Government Code. Reference: Section 13956, Government Code.

HISTORY

1. Change without regulatory effect renumbering former section 656.5 to section 649.56, including amendment of NOTE, filed 12–6–2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 49).

§ 649.57. Mitigation of Involvement in the Events Leading to the Qualifying Crime.

Factors that may be considered to mitigate involvement in the events leading to the qualifying crime include, but are not limited to:

(a) the victim suffered an injury that was significantly more serious than reasonably could have been expected as a result of his or her involvement in the events leading to the qualifying crime;

(b) another person involved in the events leading to the qualifying crime escalated his or her conduct in a manner not reasonably foreseeable by the victim or derivative victim;

(c) a third party interfered in a manner not reasonably foreseeable by the victim or derivative victim.

NOTE: Authority cited: Sections 13920 and 13974, Government Code. Reference: Section 13956, Government Code.

HISTORY

1. Change without regulatory effect renumbering former section 656.8 to section 649.57, including amendment of NOTE, filed 12–6–2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 49).

§ 649.58. Self Defense.

A victim or derivative victim shall not be found to be involved in the events leading to the qualifying crime if the sole involvement of the victim or derivative victim was in self–defense.

NOTE: Authority cited: Sections 13920 and 13974, Government Code. Reference: Section 13956, Government Code.

HISTORY

1. Change without regulatory effect renumbering former section 656.7 to section 649.58, including amendment of NOTE, filed 12–6–2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 49).

§ 649.59. Failure to Cooperate with Law Enforcement.

(a) A victim or derivative victim shall reasonably cooperate with any law enforcement agency in its investigation of the qualifying crime and the apprehension and conviction of any person involved in the qualifying crime.

(b) A victim or derivative victim who knowingly and willingly failed to reasonably cooperate with a law enforcement agency in the investigation of the qualifying crime and the apprehension and conviction of any person involved in the qualifying crime shall not be eligible for assistance.

(c) A victim or derivative victim who initially cooperated with a law enforcement agency as required by subsection (a), and was determined to be eligible for assistance, and subsequently knowingly and willingly failed to cooperate with a law enforcement agency, may be found eligible for assistance only during the period the victim or derivative victim cooperated with a law enforcement agency.

(d) A derivative victim is not eligible for assistance if the victim of the same qualifying crime failed to cooperate with a law enforcement agency as required by subdivision (a).

(e) Cooperation with a law enforcement agency includes, but is not limited to:

(1) reporting the qualifying crime;

(2) completely and truthfully responding to requests for information in a timely manner;

(3) cooperating with identifying and apprehending any person involved in the qualifying crime; and

(4) testifying in all proceedings, including restitution proceedings, as required.

(f) A victim or derivative victim whose conduct adversely affected the ability of a law enforcement agency either to investigate a qualifying crime, or to apprehend or convict any person involved in the qualifying crime may be found to have failed to cooperate with a law enforcement agency.

(1) A victim or derivative victim whose action or failure to act required a law enforcement agency to expend additional effort to apprehend or convict any person involved in the qualifying crime may be found to have failed to cooperate with a law enforcement agency.

(2) A victim or derivative victim whose action or failure to act unreasonably impeded or impaired the investigation of the qualifying crime, or the apprehension or conviction of any person involved in the qualifying crime may be found to have failed to cooperate with a law enforcement agency.

(g) In order to determine that a victim or derivative victim failed to cooperate with a law enforcement agency for a delay in reporting the qualifying crime, the delay must have adversely affected a law enforcement agency as described in subsection (f).

(h) The failure of a victim or derivative victim to perform any of the duties described in subsection (e)(2) through (4) may be found to be a failure to cooperate with a law enforcement agency even if the failure did not adversely affect a law enforcement agency as described in subsection (f).

(i) Factors that may be considered when assessing a victim's or derivative victim's cooperation with a law enforcement agency include, but are not limited to:

(1) age;

(2) physical condition;

(3) psychological or emotional condition;

(4) compelling health or personal safety factors;

(5) reasonable fear of retaliation or harm to self or family.

(j) The factors listed in subsection (i) shall be considered when assessing a minor victim's cooperation with a law enforcement agency.

(k) The assessment of a victim's or derivative victim's cooperation with a law enforcement agency shall be based on all available evidence, including supplemental crime reports.

(*l*) The eligibility of a minor victim shall not be affected by the failure of the minor victim's parent, legal custodian, or legal guardian to cooperate with a law enforcement agency.

(m) A minor derivative victim shall not be eligible if both of the following are true:

(1) the minor derivative victim's parent, legal custodian, or legal guardian is the victim through whom the minor seeks to qualify as a derivative victim; and

(2) the person described in subsection (m)(1) failed to cooperate with a law enforcement agency.

(n) An application from a non–offending parent concerning a child sexual abuse qualifying crime shall not be denied under subsection (a) for failing to timely report the qualifying crime to a law enforcement agency if the non–offending parent otherwise cooperated with a law enforcement agency.

(o) For the purposes of this section, "law enforcement agency" includes a child protective services agency.

(p) For the purposes of this section, "conviction" shall include the imposition of restitution.

NOTE: Authority cited: Sections 13920 and 13974, Government Code. Reference: Section 13956, Government Code.

HISTORY

1. Change without regulatory effect renumbering former section 657.1 to section 649.59, including amendment of NOTE, filed 12–6–2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 49).

§ 649.60. Failure to Cooperate with Law Enforcement in a Domestic Violence Qualifying Crime.

(a) Factors that may be considered when determining whether a victim of a domestic violence qualifying crime cooperated with a law enforcement agency under section 649.59 include, but are not limited to:

(1) the qualifying crime was reported to law enforcement;

(2) the perpetrator was prosecuted for the qualifying crime;

(3) the perpetrator was enrolled in a batterers' program or its predecessor domestic violence diversion program as a result of the qualifying crime;

(4) the perpetrator was not prosecuted due to factors not related to the victim's actions.

(b) A victim of a domestic violence qualifying crime who engaged in any of the following conduct may be found to have failed to cooperate with a law enforcement agency in the investigation of the qualifying crime, and the apprehension and conviction of any person involved in the qualifying crime:

(1) requested in writing that the suspect not be prosecuted for the qualifying crime;

(2) refused to testify when legally served with a subpena in a proceeding related to the prosecution of the qualifying crime;

(3) committed perjury relating to the qualifying crime;

(4) did not completely and truthfully respond to a request for information, evidence or assistance in a timely manner, unless circumstances beyond the victim's control prevented the victim from complying.

(c) For the purpose of this section, "domestic violence" shall have the same meaning as in Penal Code section 13700(b).

NOTE: Authority cited: Sections 13920 and 13974, Government Code. Reference: Section 13956, Government Code.

HISTORY

1. Change without regulatory effect renumbering former section 657.2 to section 649.60, including amendment of section and NOTE, filed 12–6–2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 49).

§ 649.61. Denial for Failure to File or Dismissal of a Criminal Complaint.

(a) An application shall not be denied solely because a criminal complaint was not filed.

(b) An application may be denied if a criminal complaint was not filed due to the victim's or derivative victim's failure to cooperate with a law enforcement agency.

(c) An application shall not be denied solely because a criminal complaint was dismissed.

(d) An application may be denied if the criminal complaint was dismissed as a result of the victim's or derivative victim's failure to cooperate with a law enforcement agency.

NOTE: Authority cited: Sections 13920 and 13974, Government Code. Reference: Section 13956, Government Code.

HISTORY

1. Change without regulatory effect renumbering former section 653.6 to section 649.61, including amendment of NOTE, filed 12–6–2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 49).

§ 649.62. Failure to Cooperate with Board or Staff.

(a) an applicant shall cooperate with the Board and its staff, and the staff of a joint powers victim witness center in the verification of all information necessary to determine eligibility.

(b) An application may be denied for an applicant's failure to comply with subsection (a).

(c) An applicant may be found to have failed to cooperate under subsection (a) if both of the following are present:

(1) the applicant has information that is needed to process the application available to him or her, or which the applicant may reasonably obtain; and

(2) the applicant failed to provide the information after being requested to do so.

NOTE: Authority cited: Sections 13920 and 13974, Government Code. Reference: Section 13954, Government Code.

HISTORY

1. Change without regulatory effect renumbering former section 657.3 to section 649.62, including amendment of NOTE, filed 12–6–2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 49).

§ 649.71. Reimbursement Calculation. [Renumbered]

HISTORY

1. New section filed 3–19–92 as an emergency; operative 3–19–92 (Register 92, No. 13). A Certificate of Compliance must be transmitted to OAL 7–17–92 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 7–17–92 as an emergency; operative 7–17–92 (Register 92, No. 29). A Certificate of Compliance must be transmitted to OAL 10–13–92 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 7–17–92 order transmitted to OAL 11–6–92 and filed 12–23–92 (Register 92, No. 52).
4. Editorial correction of HISTORY 1 (Register 95, No. 40).
5. Change without regulatory effect renumbering former section 649.71 to section 649.25 filed 12–6–2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 49).

§ 649.72. Eligibility of Felons. [Renumbered]

HISTORY

1. New section filed 9–28–94 as an emergency; operative 9–28–94 (Register 94, No. 39). A Certificate of Compliance must be transmitted to OAL by 1–26–95 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 9–28–94 order transmitted to OAL 1–25–95 and filed 3–6–95 (Register 95, No. 10).
3. Amendment filed 8–25–97 as an emergency; operative 8–25–97 (Register 97, No. 35). A Certificate of Compliance must be transmitted to OAL by 12–23–97 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 8–25–97 order, including amendment of subsection (b)(3), transmitted to OAL 10–22–97 and filed 11–17–97 (Register 97, No. 47).
5. Change without regulatory effect renumbering former section 649.72 to section 649.4 filed 12–6–2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 49).

Article 6. Payroll Claims

§ 650. Submission to State Personnel Board.

NOTE: Authority cited: Section 19761, Government Code.

HISTORY

1. Amendment and new NOTE filed 2–25–77; effective thirtieth day thereafter (Register 77, No. 9).
2. Renumbering of former article 6 (sections 650–663) to article 4.1 and renumbering of former section 650 to section 633 filed 12–17–99; operative 12–17–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 51).

§ 650.1. Effective Date of Substantive Changes. [Renumbered]

HISTORY

1. New section filed 12–17–99; operative 12–17–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 51).
2. Change without regulatory effect renumbering former section 650.1 to section 649.6 filed 12–6–2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 49).

§ 651. Computing Salaries. Forwarding of Pay Roll Claims.

HISTORY

1. Renumbering of former section 651 to section 633.1 filed 12–17–99; operative 12–17–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 51).

§ 651.1. Residency Requirements. [Renumbered]

HISTORY

1. New section filed 12–17–99; operative 12–17–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 51).
2. Change without regulatory effect renumbering former section 651.1 to section 649.1 filed 12–6–2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 49).

§ 651.2. Victim or Derivative Victim Election. [Renumbered]

HISTORY

1. New section filed 12–17–99; operative 12–17–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 51).
2. Change without regulatory effect renumbering former section 651.2 to section 649.14 filed 12–6–2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 49).

§ 651.3. Derivative Victims Who Previously Had Relationship with Victim Substantially Similar to Family Member. [Renumbered]

HISTORY

1. New section filed 12–17–99; operative 12–17–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 51).
2. Change without regulatory effect renumbering former section 651.2 to section 649.13 filed 12–6–2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 49).

§ 651.4. Eligibility of Law Enforcement Officers. [Renumbered]

HISTORY

1. New section filed 12–17–99; operative 12–17–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 51).
2. Change without regulatory effect renumbering former section 651.4 to section 649.34 filed 12–6–2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 49).

§ 651.5. Eligibility of Felons. [Renumbered]

HISTORY

1. New section filed 12–17–99; operative 12–17–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 51).

2. Change without regulatory effect renumbering former section 651.5 to section 649.5 filed 12–6–2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 49).

§ 652. Monthly Salaries.

HISTORY

1. Originally published 3–22–45 (Title 2).
2. Amendment filed 7–26–49 as an emergency; designated to be effective 8–1–49 (Register 17, No. 3).
3. Amendment filed 10–9–53 as an emergency; designated effective on 1–1–54 (Register 53, No. 18).
4. Renumbering of former section 652 to section 633.2 filed 12–17–99; operative 12–17–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 51).

§ 652.1. Emotional Injury. [Renumbered]

HISTORY

1. New section filed 12–17–99; operative 12–17–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 51).
2. Change without regulatory effect renumbering former section 652.1 to section 649.39 filed 12–6–2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 49).

§ 652.2. Examples of Threat of Physical Injury. [Renumbered]

HISTORY

1. New section filed 12–17–99; operative 12–17–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 51).
2. Change without regulatory effect renumbering former section 652.2 to section 649.40 filed 12–6–2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 49).

§ 653. Preparation of Pay Roll Claims.

HISTORY

1. Originally published 3–22–45 (Title 2).
2. Amendment filed 10–16–50 as an emergency; effective upon filing (Register 22, No. 1).
3. Renumbering of former section 653 to section 633.3 filed 12–17–99; operative 12–17–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 51).

§ 653.1. Date of Qualifying Crime. [Renumbered]

HISTORY

1. New section filed 12–17–99; operative 12–17–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 51).
2. Change without regulatory effect renumbering former section 653.1 to section 649.42 filed 12–6–2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 49).

§ 653.2. Qualifying Crime Occurring Outside California. [Renumbered]

HISTORY

1. New section filed 12–17–99; operative 12–17–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 51).
2. Change without regulatory effect renumbering former section 653.2 to section 649.2 filed 12–6–2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 49).

§ 653.3. Acts Constituting One Qualifying Crime. [Renumbered]

HISTORY

1. New section filed 12–17–99; operative 12–17–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 51).
2. Change without regulatory effect renumbering former section 653.3 to section 649.41 filed 12–6–2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 49).

§ 653.4. Proof of the Qualifying Crime. [Renumbered]

HISTORY

1. New section filed 12–17–99; operative 12–17–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 51).
2. Change without regulatory effect renumbering former section 653.4 to section 649.37 filed 12–6–2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 49).

§ 653.5. Evidence of the Qualifying Crime. [Renumbered]

HISTORY

1. New section filed 12–17–99; operative 12–17–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 51).
2. Change without regulatory effect renumbering former section 653.5 to section 649.38 filed 12–6–2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 49).

§ 653.6. Denial for Failure to File or Dismissal of a Criminal Complaint. [Renumbered]

HISTORY

1. New section filed 12–17–99; operative 12–17–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 51).
2. Change without regulatory effect renumbering former section 653.6 to section 649.61 filed 12–6–2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 49).

§ 654. Pay Roll Certificate.

NOTE: Additional authority cited: Section 13920.1, Government Code.

HISTORY

1. Amendment of subsections (a) and (b) filed 2–25–77; effective thirtieth day thereafter (Register 77, No. 9). For prior history, see Register 53, No. 23.
2. Renumbering of former section 654 to section 633.4 filed 12–17–99; operative 12–17–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 51).

§ 654.1. Vehicle–Related Qualifying Crime. [Renumbered]

HISTORY

1. New section filed 12–17–99; operative 12–17–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 51).
2. Change without regulatory effect renumbering former section 654.1 to section 649.3 filed 12–6–2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 49).

§ 654.2. Evidence of a Child Sexual or Physical Abuse Qualifying Crime. [Renumbered]

HISTORY

1. New section filed 12–17–99; operative 12–17–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 51).
2. Change without regulatory effect renumbering former section 654.2 to section 649.43 filed 12–6–2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 49).

§ 654.3. Presumption of Physical Injury in a Child Abduction Qualifying Crime. [Renumbered]

HISTORY

1. New section filed 12–17–99; operative 12–17–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 51).
2. Change without regulatory effect renumbering former section 654.3 to section 649.46 filed 12–6–2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 49).

§ 654.4. Evidence of a Domestic Violence Qualifying Crime. [Renumbered]

HISTORY

1. New section filed 12–17–99; operative 12–17–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 51).
2. Change without regulatory effect renumbering former section 654.4 to section 649.44 filed 12–6–2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 49).

§ 654.5. Presumption of Physical Injury in a Domestic Violence Qualifying Crime. [Renumbered]

HISTORY

1. New section filed 12–17–99; operative 12–17–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 51).
2. Change without regulatory effect renumbering former section 654.5 to section 649.45 filed 12–6–2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 49).

§ 654.6. Evidence of the Qualifying Crime of Stalking. [Renumbered]

HISTORY

1. New section filed 12–17–99; operative 12–17–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 51).
2. Change without regulatory effect renumbering former section 654.6 to section 649.47 filed 12–6–2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 49).

§ 655. Salary Includes All Services. Acceptance of Fees by State Officers.

NOTE: Authority cited: Section 18000, Government Code.

HISTORY

1. Amendment and new NOTE filed 2-25-77; effective thirtieth day thereafter (Register 77, No. 9).
2. Renumbering of former section 655 to section 633.5 filed 12-17-99; operative 12-17-99 pursuant to Government Code section 11343.4(d) (Register 99, No. 51).

§ 655.1. Participation in the Qualifying Crime. [Renumbered]

HISTORY

1. New section filed 12-17-99; operative 12-17-99 pursuant to Government Code section 11343.4(d) (Register 99, No. 51).
2. Change without regulatory effect renumbering former section 655.1 to section 649.51 filed 12-6-2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 49).

§ 656. Claims for Allowances Under Retirement System.

HISTORY

1. New section filed 11-30-48 as an emergency; designated to be effective 12-1-48 (Register 14, No. 6).
2. Amendment filed 10-29-51 as an emergency; effective upon filing (Register 26, No. 3).
3. Amendment filed 5-2-56 as an emergency; designated effective 5-3-56 (Register 56, No. 8).
4. Renumbering of former section 656 to section 633.6 filed 12-17-99; operative 12-17-99 pursuant to Government Code section 11343.4(d) (Register 99, No. 51).

§ 656.1. Involvement in the Events Leading to the Qualifying Crime. [Renumbered]

HISTORY

1. New section filed 12-17-99; operative 12-17-99 pursuant to Government Code section 11343.4(d) (Register 99, No. 51).
2. Change without regulatory effect renumbering former section 656.1 to section 649.52 filed 12-6-2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 49).

§ 656.2. Involvement in the Qualifying Crime Due to Illegal Drug-Related Activity. [Renumbered]

HISTORY

1. New section filed 12-17-99; operative 12-17-99 pursuant to Government Code section 11343.4(d) (Register 99, No. 51).
2. Change without regulatory effect renumbering former section 656.2 to section 649.54 filed 12-6-2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 49).

§ 656.3. Involvement in the Qualifying Crime Due to Gang Involvement. [Renumbered]

HISTORY

1. New section filed 12-17-99; operative 12-17-99 pursuant to Government Code section 11343.4(d) (Register 99, No. 51).
2. Change without regulatory effect renumbering former section 656.3 to section 649.55 filed 12-6-2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 49).

§ 656.4. Involvement in the Qualifying Crime Due to Mutual Combat. [Renumbered]

HISTORY

1. New section filed 12-17-99; operative 12-17-99 pursuant to Government Code section 11343.4(d) (Register 99, No. 51).
2. Change without regulatory effect renumbering former section 656.4 to section 649.53 filed 12-6-2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 49).

§ 656.5. Involvement in the Qualifying Crime of Prostitution. [Renumbered]

HISTORY

1. New section filed 12-17-99; operative 12-17-99 pursuant to Government Code section 11343.4(d) (Register 99, No. 51).
2. Change without regulatory effect renumbering former section 656.5 to section 649.56 filed 12-6-2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 49).

§ 656.6. Involvement in a Vehicle-Related Qualifying Crime. [Renumbered]

HISTORY

1. New section filed 12-17-99; operative 12-17-99 pursuant to Government Code section 11343.4(d) (Register 99, No. 51).
2. Change without regulatory effect renumbering former section 656.6 to section 649.50 filed 12-6-2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 49).

§ 656.7. Self Defense. [Renumbered]

HISTORY

1. New section filed 12-17-99; operative 12-17-99 pursuant to Government Code section 11343.4(d) (Register 99, No. 51).
2. Change without regulatory effect renumbering former section 656.7 to section 649.58 filed 12-6-2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 49).

§ 656.8. Mitigation of Involvement in the Events Leading to the Qualifying Crime. [Renumbered]

HISTORY

1. New section filed 12-17-99; operative 12-17-99 pursuant to Government Code section 11343.4(d) (Register 99, No. 51).
2. Change without regulatory effect renumbering former section 656.8 to section 649.57 filed 12-6-2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 49).

§ 657. Claims Recorded on Electronic Tape.

HISTORY

1. Renumbered to Section 622.1 (Register 71, No. 17). For prior history, see Register 70, No. 20.

§ 657.1. Failure to Cooperate with Law Enforcement. [Renumbered]

HISTORY

1. New section filed 12-17-99; operative 12-17-99 pursuant to Government Code section 11343.4(d) (Register 99, No. 51).
2. Change without regulatory effect renumbering former section 657.1 to section 649.59 filed 12-6-2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 49).

§ 657.2. Failure to Cooperate with Law Enforcement in a Domestic Violence Qualifying Crime. [Renumbered]

HISTORY

1. New section filed 12-17-99; operative 12-17-99 pursuant to Government Code section 11343.4(d) (Register 99, No. 51).
2. Change without regulatory effect renumbering former section 657.2 to section 649.60 filed 12-6-2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 49).

§ 657.3. Failure to Cooperate with Board or Staff. [Renumbered]

HISTORY

1. New section filed 12-17-99; operative 12-17-99 pursuant to Government Code section 11343.4(d) (Register 99, No. 51).
2. Change without regulatory effect renumbering former section 657.3 to section 649.62 filed 12-6-2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 49).

§ 660. Pay Roll Claims Under Central Disbursement System.

NOTE: Authority cited: Sections 13920 and 13921, Government Code.

HISTORY

1. Amendment of subsection (a) filed 2-25-77; effective thirtieth day thereafter (Register 77, No. 9).
2. Editorial correction of Authority cite (Register 95, No. 6).
3. Renumbering of former section 660 to section 633.7 filed 12-17-99; operative 12-17-99 pursuant to Government Code section 11343.4(d) (Register 99, No. 51).

§ 660.1. Agencies Not Included in Central Disbursement System.

NOTE: Authority cited: Sections 13920 and 13921, Government Code.

HISTORY

1. New section filed 6-26-58 as an emergency; designated effective 7-1-58. Certificate of Compliance—Section 11422.1, Government Code, filed 6-26-58. (Register 58, No. 11).

2. Amendment of subsection (2) filed 2–25–77; effective thirtieth day thereafter (Register 77, No. 9).
3. Renumbering of former section 660.1 to section 633.8 filed 12–17–99; operative 12–17–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 51).

§ 661. Payroll Deductions for United States Energy Savings Bonds.

NOTE: Authority cited: Sections 13920, 13921, and 13922, Government Code. Reference: Section 13922, Government Code.

HISTORY

1. Amendment filed 5–30–80; designated effective 7–1–80 (Register 80, No. 22). For prior history, see Registers 25, No. 3; 63, No. 18; 64, No. 11 and 65, No. 9.
2. Amendment of subsection (b) filed 12–8–80; effective thirtieth day thereafter (Register 80, No. 50).
3. Change without regulatory effect repealing Section 661 pursuant to Section 100(b)(2), Title 1, California Code of Regulations filed 2–16–90; operative 3–18–90 (Register 90, No. 10).

§ 661.1. Payroll Deductions for United States Savings Notes.

NOTE: Authority cited: Sections 13920 and 13921, Government Code.

HISTORY

1. New section filed 6–23–67 as an emergency; designated effective 7–1–67 (Register 67, No. 25).
2. Certificate of Compliance—Section 11422.1, Government Code, filed 10–5–67 (Register 67, No. 40).
3. Repealer filed 5–22–70 as procedural and organizational, designated effective 7–1–70 (Register 70, No. 21).

§ 662. Purchase and Accounting Procedures: United States Energy Savings Bonds.

NOTE: Authority cited: Section 13922, Government Code. Reference: Section 13922, Government Code.

HISTORY

1. Amendment filed 5–30–80; designated effective 7–1–80 (Register 80, No. 22). For prior history, see Registers 70, No. 21 and 77, No. 9.
2. Change without regulatory effect repealing Section 662 pursuant to Section 100 (b)(2), Title 1, California Code of Regulations filed 2–16–90; operative 3–18–90 (Register 90, No. 10).

§ 663. Payroll Deductions for Charitable Contributions.

NOTE: Authority cited: Section 13923, Government Code. Reference: Section 13923, Government Code.

HISTORY

1. Amendment of subsection (a)(3) filed 7–8–71 as procedural and organizational; designated effective 8–1–71 (Register 71, No. 28). For prior history, see Registers 57, No. 16, 57, No. 20 and 71, No. 28.
2. Amendment filed 3–3–77; effective thirtieth day thereafter (Register 77, No. 10).
3. Amendment filed 3–10–80 as an emergency; effective upon filing, Certificate of Compliance included. (Register 80, No. 11).
4. Amendment of subsection (e)(2) filed 6–5–80 as an emergency; effective upon filing; Certificate of Compliance included (Register 80, No. 23).
5. Renumbering of former section 663 to section 633.9 filed 12–17–99; operative 12–17–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 51).

Article 6.1. State Contributions Under State Employees' Medical and Hospital Care Act

§ 664. Claims for Payment.

NOTE: Authority cited for new Article 6.1: Sections 13920 and 13921, Government Code.

HISTORY

1. New Article 6.1 (Section 664) filed 12–7–61 as an emergency; designated effective 1–1–62 (Register 61, No. 24).
2. Amendment filed 12–21–61 as an emergency; designated effective 1–1–62 (Register 61, No. 26).
3. Certificate of Compliance—Section 11422.1, Government Code, filed 3–23–62 (Register 62, No. 6).
4. Renumbering of former article 6.1 (section 664) to article 4.2 and renumbering of former section 664 to section 634 filed 12–17–99; operative 12–17–99 pursuant to Government Code section 11343.4(d) (Register 99, No. 51).

Article 6.5. Security Payments to Aged and Blind

HISTORY

1. For history of Article 6.5. (Sections 665 and 666) see Register 59, No. 12.

Article 6.6. Property Tax Relief

§ 670. Certified List.

Lists of approved claims compiled by county assessors and presented to the State Controller for payment in accordance with Sec. 32, Chapter 1, Statutes of 1968 (First Extraordinary Session) shall contain a certificate reading as follows:

I certify that I am the duly qualified and acting Assessor of the County of _____; that each claim in the accompanying list has been processed and verified in accordance with Chapter 1, Statutes of 1968, First Extraordinary Session, and Section 135, Chapter 1, Title 18, California Administrative Code, and is approved for payment thereunder;

That I have not violated any of the provisions of Government Code Sections 1090–1096, inclusive.

NOTE: Authority cited: for Article 6.6: Section 13920, Gov. Code. Reference: Section 925.4, Gov. Code.

HISTORY

1. New Article 6.6 (Sections 670 and 671) filed 3–20–69 as an emergency; effective upon filing (Register 69, o. 12).
2. Certificate of Compliance—Section 11422.1, Gov. Code filed 7–17–69 (Register 69, No. 29).

§ 671. Machine Processable Media.

In lieu of the certificate required under Section 670, claims recorded on and presented in the form of electronic tapes, punched cards, or other machine processable media, shall be accompanied by a certificate reading as follows:

I certify that I am the duly qualified and acting Assessor of the County of _____; that each claim recorded on the accompanying electronic tape, punched cards, or machine processable media has been processed and verified in accordance with Chapter 1, Statutes of 1968, First Extraordinary Session, and Section 135, Chapter 1, Title 18, California Administrative Code, and is approved for payment thereunder; that a written reproduction listing each claimant was prepared therefrom and will be retained as a part of the official records of my office;

That have not violated any of the provisions of Government Code Sections 1090–1096, inclusive.

§ 672. Motion Pictures.

A claim presented to the controller pursuant to chapter 927, Statutes of 1968, shall be accompanied by a certificate of an authorized representative of the local taxing authority, as follows;

I hereby certify under penalty of perjury that I am a duly appointed, qualified and acting officer of the herein named local taxing authority; that the within claim is based upon the records of assessed valuation and applicable tax rates for said local taxing authority and is in all respects true, correct, and in accordance with law; and that I have not violated any of the provisions of Government Code Sections 1090–1096, inclusive.

NOTE: Authority cited:Section 13920, Gov. Code. Reference: Sections 925.4 and 11030, Gov. Code.

HISTORY

1. New section filed 8–6–69 as an emergency; effective upon filing (Register 69, No. 32)
2. Certificate of Compliance–Section 11422.1, Gov. Code, filed 10–22–69 (Register 69, No. 43).

§ 673. Homeowner's Property Tax Exemption.

Claims presented to the controller pursuant to Section 33, Chapter 1, Statutes of 1968, First Extraordinary Session, shall be accompanied by a certificate of the Auditor of the City or County, as follows:

(a) County Auditor.

I certify that I am the duly qualified and acting Auditor of the County of _____; that the attached statement sets forth the amounts of

exempt values granted in accordance with law for the homeowner's property tax exemption under Section 1d of Article XIII of the Constitution for said county, each city and school district or portion thereof within the county, each special district or subdivision or zone thereof or portion thereof within the county, for which a tax levy is carried on the county assessment roll; that I have correctly computed and shown on the attached statement the total amount of ad valorem tax loss to the county and the cities and districts resulting from such exemption, in accordance with the provisions of Chapter 1, Statutes of 1968, First Extraordinary Session, and Section 135, Chapter 1, Title 18, California Administrative Code; and certify, under penalty of perjury, that I have not violated any of the provisions of Government Code Sections 1090 to 1096, inclusive.

(b) City Auditor.

I certify that I am the duly qualified and acting Auditor of the City of _____; that the taxes of said city are not collected by the county; that the attached statement sets forth the amounts of exempt values granted in accordance with law for the homeowner's property tax exemption under Section 1d of Article XIII of the Constitution for said city, each district, subdistrict, or special zone within the city for which a tax levy is carried on the city assessment roll, and the tax rates applicable to each; that I have correctly computed and shown on the attached statement the total amount of ad valorem tax loss to the city and the districts resulting from such exemption, in accordance with the provisions of Chapter 1, Statutes of 1968, First Extraordinary Session, and Section 135, Chapter 1, Title 18, California Administrative Code; and certify, under penalty of perjury, that I have not violated any of the provisions of Government Code Sections 1090 to 1096, inclusive.

NOTE: Authority cited: Section 13920, Gov. Code. Reference: Section 925.4, Gov. Code.

HISTORY

1. New section filed 10–9–69; effective thirtieth day thereafter (Register 69, No. 41).

§ 674. Business Inventory Tax Exemption.

Claims presented to the Controller pursuant to Section 16106 of the Government Code shall be accompanied by a certificate of the Auditor of the County as follows:

I certify that I am the duly qualified and acting Auditor of the County of _____; that the attached statement sets forth the amounts of exempt values granted in accordance with law for the Business Inventory Exemption under Section 219 of the Revenue and Taxation Code for said County, each city and school district or portion thereof within the County, each special district or subdivision or zone thereof or portion thereof within the County, for which a tax levy is carried on the county assessment roll; that I have correctly computed and shown on the attached statement the total amount of ad valorem tax loss to the county and the cities and districts resulting from such exemption, in accordance with the provisions of Section 219 of the Revenue and Taxation Code and Section 133, Chapter 1, Title 18, California Administrative Code; and certify under penalty of perjury that I have not violated any of the provisions of Government Code Sections 1090 to 1096, inclusive.

HISTORY

1. New section filed 2–3–72 as an emergency; designated effective 3–4–72 (Register 72, No. 6).
2. Certificate of Compliance filed 4–11–72 (Register 72, No. 16).

§ 674.1. Livestock Head–Day Tax Reduction.

Claims presented to the Controller pursuant to Section 16106 of the Government Code shall be accompanied by a certificate of the Auditor of the County as follows:

I certify that I am the duly qualified and acting Auditor of the County of _____; that the attached statement sets forth the amounts of property tax reductions granted in accordance with law for the Livestock Head–Day tax under Section 5523 of the Revenue and Taxation Code for said County, each city and school district or portion thereof within the County, for which a tax levy is carried on the county assessment roll; that I have correctly computed and shown on the attached statement the total amount of tax loss to the county and the cities and school districts resulting from such reductions, in accordance with the provisions of Part 11 of Division 1 of the Revenue and Taxation Code (commencing with Section 5501) and Section 1042, Chapter 1, Title 18, California Administrative Code; and certify under penalty of perjury that I have not violated any of the provisions of Government Code Sections 1090 to 1096, inclusive.

HISTORY

1. New section filed 2–3–72 as an emergency; designated effective 3–4–72 (Register 72, No. 6).
2. Certificate of Compliance filed 4–11–72 (Register 72, No. 16).

Article 7. Invoice Claims

§ 675. Purchase of Materials and Supplies.

The State Controller shall issue no warrants for claims covering work or services or the purchase of materials, supplies or equipment, within the purview of Section 14780 of the Government Code, unless the contracts or invoices have first been approved or purchase orders issued by the Department of General Services.

HISTORY

1. Originally published 3-22-45 (Title 2).
2. Amendment filed 10-1-49 as an emergency (Register 18, No. 1).
3. Amendment filed 10-17-63 as procedural and organizational; effective upon filing (Register 63, No. 18).
4. Amendment filed 1-21-71 as procedural and organizational; effective upon filing (Register 71, No. 4).

§ 676. Specifications for Bids.

There shall be no qualifications in the specifications for any contract which will work for the advantage of any particular bidder or any class of bidders.

§ 677. Invoices.

(a) All invoices or vouchers shall be billed to the State of California or to a particular department, board, commission, agency, or officer thereof and shall be presented for allowance in accordance with the procedure set forth in these rules and regulations.

(b) Invoices or vouchers not on printed bill heads shall be signed by the vendor or person furnishing the supplies or service.

(c) Every invoice for the purchase of materials, supplies or equipment shall show the purchase order number under which the materials, supplies or equipment were purchased.

(d) Every invoice shall be properly itemized before a claim, based thereon, is filed for payment.

(e) Where claims for services are rendered under a contract, the claims shall show the agency contract number.

(f) An invoice will not be required from a lessor if the applicable lease is on file with the State Controller and the State agency submits an itemized claim for payment in a form approved by the State Controller.

HISTORY

1. Amendment filed 6-14-60; designated effective 8-1-60 (Register 60, No. 14).
2. New subsection (f) filed 5-11-70 as procedural and organizational; designated effective 7-1-70 (Register 70, No. 20).

§ 678. Submission of Claims for Invoices.

Claims for invoices may be submitted as frequently as desired. Where the amount involved is too large to be paid from revolving funds, invoices allowing discounts shall be submitted on special schedules, with a notation to the State Controller requesting an expeditious audit and issuance of the warrant. Invoices for amounts of $50 or less exclusive of sales tax, and invoices payable by authorized bank drafts in the amount of $10,000 or less inclusive of sales tax, are conclusively deemed to permit immediate payments from revolving funds when such funds are available, and such invoices shall be submitted when reimbursement of the revolving fund is claimed. Letters of transmittal covering claims are not required.

NOTE: Authority cited: Section 13920, Government Code. Reference: Section 925.4, Government Code.

HISTORY

1. Amendment filed 10-5-73; effective thirtieth day thereafter (Register 73, No. 40). For prior history, see Register 70, No. 25.
2. Amendment filed 5-24-74; effective thirtieth day thereafter (Register 74, No. 21).
3. Amendment filed 3-19-76; effective thirtieth day thereafter (Register 76, No. 12).
4. Amendment filed 12-8-80; effective thirtieth day thereafter (Register 80, No. 50).
5. Amendment of section heading, section and NOTE filed 2-29-2000; operative 2-29-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 9).

§ 679. Certificate Accompanying Claims.

The affidavit or certificate accompanying claims for payment of invoices, required by Section 624, will normally be worded as indicated in (a) below. For special types of services or invoices, in connection with which this standard wording would not be suitable, the certificate may be worded in accordance with such other subsection of this rule as may apply.

(a) Normal invoices.

"I hereby certify under penalty of perjury as follows:

"That I am a duly appointed, qualified and acting officer of the herein named state agency, department, board, commission, office, or institution; that the within claim is in all respects true, correct, and in accordance with law; that the services mentioned herein were actually rendered and supplies delivered to the state agency in accordance with the contract and law; that authorizations for purchases have been duly obtained wherever required and that amounts claimed and articles delivered comply therewith; that the amounts of any refunds to claimants indicated herein were received from such claimants by the herein named agency in excess of that legally due it under the law, or are otherwise lawfully due such claimants; that all of the expenditures herein set forth are in accordance with the current budget allotments and provisions as approved by the Budget Division of the State Department of Finance, and that none of the expenditures are in excess thereof; that there has been full compliance with all provisions or restrictions in the budget act or any other appropriation relating to expenditures herein; that the claimants named herein are each entitled to the amount specified opposite their respective names and actually have been paid or will be paid as allowed when warrant is received from the State Controller; that I have not violated any of the provisions of Sections 1090 to 1096, inclusive, of the Government Code, in incurring the items of expense mentioned in the attached claim, or in any other way; that any disaster service worker for whom compensation or reimbursement for expenses incurred is claimed herein has, if required by law, taken, subscribed, and filed the oath set forth in Section 3103 of the Government Code."

(b) Railroad invoices for claims under Section 1202.2, Public Utilities Code.

"I hereby certify under penalty of perjury as follows:

"That I am a duly appointed, qualified, and acting officer of the herein named state agency; that the within claim represents the share of the cost of maintaining automatic grade crossing protection assigned to the public agencies by the Public Utilities Commission pursuant to Section 1202.2 of the Public Utilities Code; that the amount of the within claim has been computed in accordance with the Decisions of the Public Utilities Commission and is true and correct; that I have not violated any of the provisions of Sections 1090 to 1096, inclusive, Government Code, in incurring the expenses mentioned in the attached claim, or in any other way; that all of the expenditures herein set forth are in accordance with the current budget allotments and provisions and that none of the expenditures is in excess thereof; that each claimant named herein is entitled to the amount specified opposite his name."

NOTE: Authority cited: Section 13920, Government Code. Reference: Section 925.4, Government Code.

HISTORY

1. Originally published 3-22-45 (Title 2).
2. Amendment filed 5-9-68; effective thirtieth day thereafter (Register 68, No. 18). For prior history, see Register 57, No. 20.
3. Amendment filed 2-28-80; designated effective 4-1-80 (Register 80, No. 9).

§ 680. Delayed Submission of Invoices.

Invoices shall be submitted with claims for cost of securities purchased as investment of state funds. However, if circumstances exist which prevent the timely submission of invoices, the Controller may issue and deliver warrants for cost of securities. In such event an explanation must accompany the claim and the invoices must be submitted to the Controller within seven (7) calendar days after presentment of the claim.

NOTE: Authority cited: Sections 13920 and 13921, Government Code.

HISTORY

1. New section filed 6–18–59; effective thirtieth day thereafter (Register 59, No. 10).

Article 8. Traveling Expenses

§ 700. Scope.

It is the purpose of this Article to provide reimbursement for the necessary out–of–pocket expenses incurred by state officers and employees because of travel on official state business. Each state agency is charged with the responsibility of determining the necessity for, and the method of, travel, provided, however, that once such necessity has been determined, reimbursement shall be governed by these rules. It is the intent of the Board that state agencies shall not have discretion to provide reimbursement at a lower amount than contained in Board rules, unless such discretion is specifically mentioned. Language of this article providing a specific time, distance, or amount shall be rigidly interpreted. Language such as "not more than" or "up to" a specified amount shall be interpreted as a rigid ceiling with departmental discretion below such ceiling.

NOTE: Authority cited for Article 8: Sections 13920 and 13921, Government Code.

HISTORY

1. Revision of Article 8 (Sections 700 through 730) filed 8–22–63; designated effective 10–1–63 (Register 63, No. 14). For prior history of Article 8, see Registers 61, No. 23; 62, Nos. 6, 12, and 16; 63, No. 8.
2. Amendment filed 1–13–69; designated effective 3–1–69 (Register 69, No. 4).
3. Editorial reprinting of text deleted in error in Register 84, Nos. 8 and 12 (Register 84, No. 15).

§ 701. Definitions.

For the purposes of this Article, the following definitions will apply:

(a) Headquarters. Headquarters shall be established for each state officer and employee and shall be defined as the place where the officer or employee spends the largest portion of his regular workdays or working time, or the place to which he returns on completion of special assignments, or as the Board of Control may define in special situations.

(1) Where an office building or similar definite place constitutes the employee's headquarters, no per diem expenses shall be allowed at any location within 25 miles of said headquarters as determined by the normal commute distance.

(2) Where the major portion of an employee's working time is spent within a specifically assigned or limited geographical area, such as a patrol area or beat where the same routes are traveled frequently and routinely on one–day trips, or such as different campuses or teaching locations associated with a college, no per diem expenses shall be allowed at any location within 25 miles from any point in this assigned area as determined by the normal commute distance.

In order to insure equity in special cases, agency heads may disregard this subsection and authorize individual claims based on subsection (1) of this rule.

(3) In cases where adherence to the 25–mile limitation creates an unusual and unavoidable hardship to the officer or employee, exceptions may be granted by the Board of Control.

(4) Employees on travel status for less than 24 hours may claim subsistence expenses incurred before or after the regularly scheduled work day in accordance with Section 706(c)(1) provided the departure time or return time exceeds the regularly scheduled work day by one hour.

(b) Residence. A place of primary dwelling shall be designated for each state officer and employee. A primary dwelling shall be defined as the actual dwelling place of the employee and shall be determined without regard to any other legal or mailing address. However, if an employee is temporarily required to dwell away from his primary dwelling place due to official travel away from headquarters, and said primary dwelling is either inhabited by his dependents or is maintained by the employee at a net monthly expense in excess of $200, such dwelling place may be continued as the employee's designated primary dwelling.

(1) No reimbursement for per diem or other subsistence expenses shall be allowed on the premises of an employee's residence.

(2) An employee shall have only one residence at which travel expenses are prohibited. In any case, where an employee maintains more than one dwelling, meeting the definition of residence set forth in subsection (b) above, the agency head shall designate the one place which bears the most logical relationship to the employee's headquarters.

(c) Travel Expenses. Travel expenses include:

(1) Per Diem Expenses. Per diem expenses consist of the charges and attendant expenses for meals and lodging and all charges for personal expenses incurred while on travel status.

(2) Business Expenses. Business expenses consist of the charges for business phone calls and telegrams; emergency clothing, equipment or supply purchases; and all other charges necessary to the completion of official business. Any emergency purchase shall be explained, and if over $25 must be approved by the department head, deputy, or chief administrative officer.

(d) Protective Services. A member of the California State Police assigned as provided by Government Code Section 14613, or a member of the California Highway Patrol assigned to supplement State Police capabilities under Section 14613, may claim subsistence allowance for in–state travel as follows:

(1) If expenses actually incurred by the employee while traveling with the protected individual exceed the per diem allowance authorized for in–state travel, the employee may elect to claim the subsistence allowance authorized by Board of Control Rule 706(b).

(2) Any expense claim submitted under (1), must contain a certification by the Chief of the California State Police naming the individual being protected and verifying that the travel expenses were incurred while the claimant was assigned to protect said individual.

(3) Claims submitted under this section shall not be subject to the limitations of subsection 701(a).

(e) Faculty Exchange Program. When an employee of the California State University and Colleges participates in a faculty exchange program at a campus more than 160 kilometers (100 miles) distance from the home campus or his residence, whichever is less, transportation expenses for one round trip shall be allowed in accordance with Section 711.

NOTE: Additional authority cited: Section 13920, Government Code. Reference: Section 11030, Government Code.

HISTORY

1. Editorial reprinting of text deleted in error in Register 84, Nos. 8 and 12 (Register 84, No. 15).

§ 702. Discontinuance of Subsistence Allowances.

(a) Except in the case of state elected officials, Short Term Subsistence Allowances authorized by Rule 706(a)(1) will be discontinued after the 30th consecutive day in one location unless a continuation has been approved in advance by the department director, or equivalent.

(b) Long–Term and Non–Commercial Subsistence Allowances authorized by Rule 706(a)(2), 706(a)(3) may be continued beyond thirty days without the approval of the department director, or equivalent.

NOTE: Authority cited: Section 13920, Government Code.

HISTORY

1. Amendment filed 8–12–76 as an emergency; designated effective 9–1–76 (Register 76, No. 33). For prior history, see Register 69, No. 4.
2. Certificate of Compliance filed 1015–76 (Register 76, No. 42).
3. Amendment of subsection (b) filed 1–2–79; effective thirtieth day thereafter (Register 78, No. 52).

§ 703. Report of Reimbursed Expense Time Away from Headquarters.

(a) Any officer or employee whose headquarters is fixed by the Board of Control, who spends the equivalent of more than 10 days a month in his official duties, who receives a salary plus subsistence expenses, and who is away from headquarters and claims travel expense in any one location for more days in any one month than he spent at his headquarters, in each of three or more months in any calendar year, shall file a report thereof with the board.

(b) The report shall contain a statement of the days for which travel expense was claimed away from headquarters during the year and the location at which such expense was incurred. Such reports shall specify those circumstances inherent in the reportee's work assignments which will justify continuation of the headquarters as established by the board. Such reports shall be submitted by the 15th of the month following the third month in which the travel expense was claimed.

HISTORY

1. Amendment of subsection (b) filed 4–20–72 as an emergency; effective upon filing (Register 72, No. 17).
2. Amendment of subsection (b) refiled 9–7–72 as an emergency; effective upon filing (Register 72, No. 37).
3. Certificate of Compliance filed 1–3–73 (Register 73, No. 1).

§ 704. Expense Account Form.

(a) No travel expense account shall be paid unless rendered upon a Travel Expense Claim, Standard Form 262 or upon some other form approved by the Controller. All expense accounts shall be properly itemized, accompanied by the necessary vouchers and approved by the duly authorized officer. It is the responsibility of the officer approving the claim to ascertain the necessity and reasonableness of incurring expenses for which reimbursement is claimed.

(b) Expense accounts shall be rendered at least once a month and not more often than twice a month except that if the amount claimable for any month does not exceed $10, the filing may be deferred until the total amount claimable exceeds $10 or until June 30, whichever occurs first. At the end of a fiscal year, travel expenses claimed for July 1 and beyond must be on a separate travel expense claim from those claimed for June 30 or earlier. In no event shall expense accounts totaling less than $1 be rendered or paid.

(c) Each officer and employee when making a claim for travel expenses must show the inclusive dates of each trip for which allowances are claimed and the times of departure and return. Time of departure and return, as used herein, means the time employee starts from or returns to his office or, when leaving on a trip or returning from a trip without going to the office, his home.

(d) Each officer and employee must state the purpose or objective of each trip for which reimbursement is claimed, and for each meal for which reimbursement is claimed under Rules 707 and 708.

(e) Each state officer and employee must show his headquarters address and his primary dwelling address on the Travel Expense Claim. Employees claiming subsistence expenses pursuant to Section 706(a)(2)(B) will show their headquarters address as the address of their primary dwelling.

(f) Each claim for the payment of travel expenses shall contain a certification as follows:

I hereby certify that the above is a true statement of the travel expenses incurred by me in accordance with Board of Control rules in the service of the State of California, and that all items shown were for the official business of the State of California.

NOTE: Authority cited: Section 13920, Government Code. Reference: Section 19463, Government Code.

HISTORY

1. Amendment of subsection (d) filed 8–12–76 as an emergency; designated effective 9–1–76 (Register 76, No. 33). For prior history, see Register 71, No. 4.
2. Certificate of Compliance filed 10–15–76 (Register 76, No. 42).
3. Amendment of subsection (e) filed 12–29–78 as an emergency; designated effective 1–1–79. Certificate of Compliance included (Register 78, No. 52).
4. Editorial reprinting of text deleted in error in Register 84, Nos. 8 and 12 (Register 84, No. 15).

§ 705. Business Expenses.

HISTORY

1. Amendment filed 12–4–70; designated effective 1–4–71 (Register 70, No. 49).
2. Repealer filed 12–16–70 as an emergency; designated effective 1–4–71 (Register 70, No. 51).
3. Certificate of Compliance—Section 11422.1, Gov. Code, filed 3–3–71 (Register 71, No. 10).

§ 706. Subsistence Allowance.

When state officers and employees are on travel status as defined in this Article, payment of a subsistence allowance will be authorized by the Board of Control for both in–state and out–of–state travel. The circumstances of travel will determine the rate allowed. Agencies will authorize payment for lodging, meals and incidental expenses as claimed by the employee in accordance with Section 706(c). Each agency will be responsible for determining which of the following allowances is applicable:

(a) In–State Subsistence Allowance.

(1) Short–Term Allowance. A short–term allowance will be authorized when the circumstances and duration of travel are such that the traveler incurs expenses comparable to those arising from the use of good, moderately priced establishments, catering to the general public. The short–term allowance is intended for trips of such duration that weekly or monthly rates are not obtainable.

(2) Long–Term Allowance. A long–term allowance will be authorized when the circumstances of travel are such that the traveler incurs expenses in one location comparable to those arising from the use of establishments catering to the long–term visitor.

(A) An employee on long–term field assignment away from his headquarters who maintains a permanent residence elsewhere while living at the job location will be authorized the full allowance provided one of the following conditions exists:

1. Permanent residence is occupied by employee's dependents, or
2. Permanent residence is being maintained at a net expense to him in excess of $200 per month.

To qualify for this allowance, an employee must submit whatever evidence his agency may require substantiating the existence of either condition 1 or 2.

(B) An employee on long–term field assignment away from his headquarters who does not maintain a permanent residence away from the job site in accordance with Section 706(a)(2)(A) will be authorized an allowance equal to one–half the amount of the long–term allowance rounded to the nearest dollar.

(C) Employees will be eligible to claim the appropriate allowance for every 24–hour period on travel status. Allowances for partial day travel status will be as follows:

1. Less than 12 hours, one–half the appropriate allowance, rounded to the nearest dollar,
2. From 12 to 24 hours, the full allowance

(3) Non–Commercial Allowance. A non–commercial allowance will be authorized when the circumstances of travel are such that the traveler incurs expenses comparable to those arising from the use of non–commercial subsistence facilities such as, but not limited to, house trailers or field camping equipment.

(A) Employees will be eligible to claim this allowance for every 24–hour period on travel status. Allowances for partial day travel status will be as follows:

1. Less than 12 hours, one–half the allowance, rounded to the nearest dollar,
2. From 12 to 24 hours, the full allowance

(b) Out–Of–State Subsistence Allowance. For out–of–state travel, state elected officials and other employees will be reimbursed actual lodging expenses, supported by a voucher, and reimbursed for meal and incidental expenses in accordance with Section 706(c).

(1) Out–of–Country Subsistence Allowance. When employees are authorized to travel outside the continental United States, and continue to maintain a permanent residence either occupied by the employees' dependents or maintained at a net monthly expense in excess of $200, reimbursement of subsistence expenses may exceed established rates if the agency obtains advance approval of specific rates from the Board of Control.

(c) Computation Of Allowances.

(1) In computing the allowance for travel, the following reimbursement will be allowed in any 24–hour period or fractional part thereof:

	Statewide	Designated High–Cost Areas
Lodging	$35.00	Up to $43.00 (with receipt)
Breakfast	4.00	4.00
Lunch	7.25	7.25
Dinner	12.00	12.00

(2) Designated High–Cost Areas. To be eligible for the higher lodging allowance, the employees must be required to travel to the downtown areas of San Francisco, Los Angeles, or San Diego and must furnish a commercial lodging receipt for the day(s) of travel which bears one of the following ZIP Codes:

San Francisco: 94102, 94104, 94108, 94109, 94111, 94133, 94103, 94105

Los Angeles: 90012, 90013, 90014, 90015, 90017, 90021, 90071, 90045

San Diego: 92101, 92110, 92108, 92103, 92106.

Receipts bearing other than the above ZIP Codes, or no receipts, will limit reimbursement to the statewide rate of $62. Rule 710(b) may not be invoked.

(3) An additional $3.75 incidental allowance may be claimed for each 24–hour period.

(4) Long–Term and Non–Commercial Allowances will be computed at 60% of the statewide rate in Section 706(c)(1), plus the incidental allowance authorized by Section 706(c)(3) rounded to the nearest dollar.

(d) Expenses Outside the State. Expenses incurred outside the State will not be allowed unless authorization for incurring them and permission for absence from the State has first been obtained from the Governor and the Director of Finance, except that in cases where such expenses are incurred by travel to and from places in states bordering upon this State, approval of the Director of Finance only will be required. Any terms or directives set forth in such authorization are limitations and will not operate as exceptions to these rules. A claim for expenses for out–of–state travel must be submitted on a separate expense account. This section shall not apply to committees of the Legislature or of either house thereof nor to employees of any such committee.

(e) Subsistence Expense Negotiated or Paid for by the State. When a significant portion of the subsistence expenses (either meals or lodging) are negotiated or otherwise paid for by the State (e.g., billed to the State, paid by a group leader, included in overnight train fare, etc.), the employee will not be reimbursed for such expenses. The employee will be allowed to claim reimbursement in accordance with Section 706(c) for any subsistence not provided.

NOTE: Authority cited: Sections 11032 and 13920, Government Code. Reference: Sections 11030 and 19463, Government Code.

HISTORY

1. New subsection (b)(1) filed 5–6–77 as an emergency; effective upon filing (Register 77, No. 19). For prior history, see Register 77, No. 9.
2. Certificate of Compliance filed 7–29–77 (Register 77, No. 31).
3. Amendment filed 11–22–77; designated effective 1–1–78 (Register 77, No. 48).
4. Amendment of subsections (a), (b)(1) and (c) filed 12–29–78 as an emergency; designated effective 1–1–79. Certificate of Compliance included (Register 78, No. 52).
5. Amendment of subsection (c) filed 12–8–80; effective thirtieth day thereafter (Register 80, No. 50).
6. Amendment of subsection (c) filed 9–30–82; effective upon filing pursuant to Government Code Section 11346.2(d) (Register 82, No. 40).

§ 706.1. Continuous Indeterminate Field Assignment Allowances.

NOTE: Authority cited: Section 13920, Government Code. Reference: Section 19463, Government Code.

HISTORY

1. Repealer filed 12–29–78 as an emergency; designated effective 1–1–79. Certificate of Compliance included (Register 78, No. 52). For prior history, see Register 77, No. 48.

§ 707. Meal Expenses.

NOTE: Authority cited: Section 13920, Government Code. Reference: Sections 19463 and 11030, Government Code.

HISTORY

1. New subsection (d) filed 5–30–80; designated effective 7–1–80 (Register 80, No. 22). For prior history, see Registers 76, No. 33; 76, No. 42; 77, No. 9; 77, No. 48; 78, No. 40 and 78, No. 52.
2. Editorial reprinting of text deleted in error in Register 84, Nos. 8 and 12 (Register 84, No. 15).
3. Change without regulatory effect repealing section filed 5–13–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 20).

§ 708. Attending Conventions, Conferences, or Business Meetings.

(a) All regulations governing short–term travel and subsistence allowances will apply except that employees may be reimbursed for actual subsistence expenses, supported by voucher, when the convention or conference is planned and arranged by a non–state agency if such expenses are beyond the control of the employees.

(b) Registration fees will be allowed except for conventions or conferences called by a state agency for the dissemination of information to its own employees. Reimbursement for registration fees exceeding $50 must be approved by the department head or delegated representative.

(c) Where more than two individuals (officers or employees) from the same department are attending the same convention or conference, each claim must be approved by the department head or delegated representative. This requirement does not apply to a convention or conference called by a state department for purposes of instruction or dissemination of information to its own officers or employees.

(d) Exceptions to these rules may be approved in advance by the Board of Control.

NOTE: Authority cited: Section 13920, Government Code.

HISTORY

1. Amendment filed 10–6–78; designated effective 11–6–78 (Register 78, No. 40). For prior history, see Register 77, No. 48.
2. Editorial correction of subsection (a) (Register 80, No. 29).
3. Editorial reprinting of text deleted in error in Register 84, Nos. 8 and 12 (Register 84, No. 15).

§ 709. Contracting for Subsistence Expenses.

Agreements may be entered into with restaurants, hotels, and lodging houses for the furnishing of subsistence to groups of state employees when such method of handling is advantageous to the State. When such agreements are entered into, the vendor may receive payment either from the group leader or by billing the State on a regular itemized invoice.

(a) Group leaders who pay subsistence expenses for other personnel may claim reimbursement by submitting a vendor's invoice and a list of names of the employees whose expenses were paid.

(b) Members of a group who have some portion of their subsistence expenses paid by the group leader may claim reimbursement for the remainder of their actual and necessary subsistence expenses in accordance with Section 706(e).

(c) The total payment under any such agreement shall not exceed the aggregate of the subsistence allowances otherwise claimable by the participating employees.

HISTORY

1. Amendment of subsection (a) filed 1–13–69; designated effective 3–1–69 (Register 69, No. 4).
2. Amendment of subsection (b) filed 12–4–70; designated effective 1–4–71 (Register 70, No. 49).
3. New subsection (c) filed 2–11–74; effective thirtieth day thereafter (Register 74, No. 7).
4. Editorial reprinting of text deleted in error in Register 84, Nos. 8 and 12 (Register 84, No. 15).

§ 710. Receipts or Vouchers.

(a) Receipts or vouchers shall be submitted for every item of expense except as follows:

(1) Railroad and bus fares, where the fares are available in published tariffs, and travel is wholly within the State of California. However,

vouchers must be submitted in the case of cash purchases of airplane travel, Pullman accommodations, or extra fare train, travel by any common carrier outside of the State except taxi or hotel bus fares.

(2) Subsistence allowances, except when specified.

(3) Street car, ferry fares, bridge and road tolls.

(4) Long distance telephone or telegraph charges, if date, place and party called are shown, unless the telephone call is in excess of $2.50 in which case vouchers or other supporting evidence shall be provided.

(5) Taxi or hotel bus fares, when necessary upon official business.

(6) All legal expenditures of $1 or less.

(7) Parking fees of $3.50 or less for any one continuous period of parking.

(b) In cases where receipts cannot be obtained or have been lost, a statement to that effect shall be made in the expense account and the reason given. In the absence of satisfactory explanation the amount involved shall not be allowed.

History

1. New subsection (a)(7) filed 1–3–69; designated effective 3–1–69 (Register 69, No. 4).
2. Amendment of subsection (a) filed 11–22–77; designated effective 1–1–78 (Register 77, No. 48).
3. Amendment of subsection (a)(7) filed 12–1–77 as an emergency; effective upon filing. Certificate of Compliance included (Register 77, No. 48).
4. Amendment of subsection (a)(7) refiled as an emergency 12–6–77; designated effective 1–1–78. Certificate of Compliance included (Register 77, No. 48).
5. Editorial reprinting of text deleted in error in Register 84, Nos. 8 and 12 (Register 84, No. 15).

§ 711. Transportation Expenses.

(a) Transportation expenses consist of the charges for commercial carrier fares; private car mileage allowances; emergency repairs to state cars; overnight and day parking of state or privately–owned cars; bridge and road tolls; necessary taxi, bus, or streetcar fares; and all other charges essential to the transport from and to the official headquarters.

(b) Reimbursement will be made only for the method of transportation which is in the best interest of the State, considering both direct expense as well as the officer's or employee's time. Provided the mode of transportation selected does not conflict with the needs of the agency, the officer or employee may use a more expensive form of transportation and be reimbursed at the amount required for a less expensive mode of travel. Both modes of transportation will be shown on the travel claim with reference to this section.

(c) In any case in which reimbursement for expenses of transportation by private automobile or privately–owned airplane is claimed, the license number of the automobile or the civilian airplane license number as well as the name of each state officer, employee, or board, commission, or authority member transported on the trip shall be stated. As such reimbursement is for the expense of use of the automobile or airplane regardless of the number of persons transported, no reimbursement for such transportation shall be allowed any passenger in any automobile or airplane operated by another such officer, employee or member.

In the determination of fares or mileage paid for transportation by airplane, the point of origin or return shall be an appropriate airport facility serving the area of the employee's headquarters or residence, whichever results in the lesser distance or amount.

(d) Expenses arising from travel between home or garage and headquarters shall not be allowed. Where a trip is commenced or terminated at claimant's home, the distance traveled shall be computed from either his headquarters or home, whichever shall result in the lesser distance.

Exceptions to the above are:

(1) Where such expenses are incurred by call back for overtime work necessitating more than one trip to the work location on a normal work day or by reason of any call back on an employee's normal day off.

(2) When the headquarters of a permanent, full time employee is located 24 or more kilometers (15 or more road miles) one way from the nearest residential area with available housing, the appointing power may authorize payment of expenses incurred by an employee in the use of a privately owned vehicle.

(A) The authorizing agency must obtain prior approval from the Board of Control with regard to the location of the nearest residential area with available housing and amount of mileage to be paid.

(B) Reimbursement will be at the rate provided in Rule 714(b) for distance driven and authorized in accordance with this rule and being in excess of 48 kilometers (30 miles) round trip.

(C) The term "available housing" as used in this subsection is intended to relate primarily to the quantity of housing available and not to its quality or cost.

(D) Distance will be computed from a location within the selected nearest residential area to the employee's work headquarters by the most direct road route and not the actual miles driven.

(E) If an employee's residence is not located in the designated residential area, but is more than 48 kilometers (30 miles) round trip from his remote location headquarters, he may be reimbursed for travel from his residence or from the selected location within the designated residential area, whichever is less.

(F) Payments will be authorized only if the appointing power has determined that the employee cannot participate in a department sponsored car or van pool.

(G) An employee whose headquarters is designated as remote and who lives in the designated residential area who is required to report to a worksite other than headquarters for a particular day, and who is required to use his own vehicle shall receive payment for the round trip from the designated residential area to the worksite.

(H) An employee whose headquarters is designated as remote and who lives less than 24 kilometers (15 miles) from headquarters, who is required to report to a worksite other than headquarters for a particular day, and who is required to use his own vehicle shall receive payment for the round trip from his own residence to the worksite or his headquarters to the worksite, whichever is less.

(I) An employee whose headquarters is designated as remote, who does not live in the designated area but lives more than 24 kilometers (15 miles) from his headquarters, who is required to report to a worksite other than headquarters for a particular day and who is required to use his own vehicle shall receive payment for the actual round–trip distance by the most direct route, not to exceed:

1. The distance from the designated residential area to the worksite, or

2. The distance from the employee's headquarters to the worksite, whichever is greater.

(3) When travel to or from a common carrier commences or terminates before or after the regularly scheduled work day or on a regularly scheduled day off, distance may be computed from the employee's residence in accordance with Section 714(b).

(e) When an employee's regular work assignment requires him to rotate among two or more posts or work stations at different geographic locations within a metropolitan area either to protect state property or state personnel and he is instructed to report directly to the designated post for a full shift, distance from his home to the designated post and return shall be limited to that which exceeds the round trip distance from his home to his designated headquarters, and shall be computed at the rate set forth under rule 714(b). For the purpose of determining the correct distance to be allowed in these situations, headquarters shall be a designated single geographic location or address regardless of whether the employee spends a major or significant portion of his working time there.

(f) No reimbursement will be allowed for transportation expense when the employee uses a privately–owned motorcycle or motor–driven cycle in the conduct of official state business.

NOTE: Authority cited: Section 13920, Government Code. Reference: Section 11030, Government Code.

History

1. New subsection (d)(3) filed 11–22–77; designated effective 1–1–78 (Register 77, No. 48). For prior history, see Register 77, No. 31.

2. Amendment of subsection (d)(2)(B) filed 12–12–77 as an emergency; designated effective 1–1–78. Certificate of Compliance included (Register 77, No. 51).
3. Amendment filed 6–8–79 as an emergency; designated effective 7–1–79 (Register 79, No. 23). Certificate of Compliance included.
4. Editorial reprinting of text deleted in error in Register 84, Nos. 8 and 12 (Register 84, No. 15).

§ 712. Special Transportation.

(a) Where it is necessary to hire special conveyances, except automobiles, a full explanation, stating the facts constituting the necessity, shall accompany the expense claim.

(b) Commercial Automobile Rental.

(1) Reimbursement will be for actual and necessary costs of such rental when substantiated by a voucher. Where it is necessary to pay extra charges or premium rental rates for air conditioning, convertible bodystyle, expensive, or other luxury items, a full explanation shall accompany the expense claim.

(2) Reimbursement will not be made for a damage waiver. Reimbursement will be made to the officer or employee for any loss necessarily sustained by him by reason of his not having purchased such waiver.

(c) Where a privately owned bicycle is used in the conduct of official state business, the employee will be allowed to claim 4 cents per 1.6 kilometers (mile).

NOTE: Authority cited: Section 13920, Government Code. Reference: Section 11030, Government Code.

HISTORY

1. New subsection (b) filed 4–23–64; designated effective 7–1–64 (Register 64, No. 8).
2. Amendment filed 1–13–69; designated effective 3–1–69 (Register 69, No. 4).
3. Repealer of subsection (c) filed 11–7–69; designated effective 1–1–70 (Register 69, No. 45).
4. New subsection (c) filed 8–31–79, designated effective 10–1–79 (Register 79, No. 35).
5. Editorial reprinting of text deleted in error in Register 84, Nos. 8 and 12 (Register 84, No. 15).

§ 713. Transportation by Aircraft.

(a) Scheduled Airline. Claims for transportation by scheduled airline shall be allowed at the lowest fare available in conformity with the regular published tariffs for scheduled airlines in effect on the date of origination of the flight. Claims for reimbursement of higher fare or extra charges for transportation by scheduled airline may be allowed if accompanied by a full explanation stating the facts constituting the official necessity.

(b) Privately–Owned Aircraft. A claim of an employee for transportation by privately–owned aircraft shall be allowed where he has obtained prior approval of the use of this form of transportation from his department. If an employee is to act as pilot, he must satisfy the requirements of the Insurance Officer, Department of General Services, as to liability insurance coverage. The Insurance Officer shall file approved authorizations for such allowance with the State Controller.

(1) Reimbursement for use of the employee's privately–owned aircraft shall be made at the rate of 28 cents per statute mile, or 17.5 cents per kilometer.

(A) Distance shall be computed on the basis of shortest air route from origin to destination, using airways whenever possible. Distance shown on claim shall be clearly marked "Air Distance."

(B) When the trip is limited solely to state business and the "Air Distance" cannot accurately be computed from origin to destination, the department director may authorize reimbursement for the actual cost of renting a plane.

(2) Reimbursement for use of a rented aircraft will be for actual and necessary costs of such rental when substantiated by voucher.

(A) Reimbursement will be authorized only for the size and type aircraft necessary to complete the assignment.

(3) When substantiated by a voucher, reimbursement will be made for actual and necessary expenses for landing and parking fees in connection with the use of the aircraft. Reimbursement will not be allowed for storage or parking fees at the location where the privately–owned aircraft is normally stored.

(4) If an employee is to act as pilot and carry passengers he must, in addition to Federal Aviation Administration Regulations, have previously logged as a licensed private pilot in command of an aircraft at least 250 hours of actual flight. In addition, the employee pilot must have logged, as a pilot in command of an aircraft, at least 40 hours of actual flight within the preceding 12 months. Any employee pilot who has carried or intends to carry passengers may be required to present his log book substantiating that he meets these requirements. For the purpose of this rule, the term passenger shall be defined as any person other than the pilot traveling in the aircraft. An employee pilot who carries a passenger but fails to meet the above qualifications is not entitled to any reimbursement for that transportation expense.

(c) Payment of Fare. Payment for transportation by aircraft may be made by (1) cash, (2) credit card, or (3) ticket order. In cases where payment is made by cash, the travel expense claim must be accompanied by the traveler's flight coupon if one was issued, in accordance with Rule 710(a)(1). If no flight coupon was issued, as may be the case with chartered or private aircraft, a formal receipt must be submitted. If payment was made by credit card or by ticket order, this fact should be noted on the travel expense claim.

(d) Air Travel Insurance. Any state agency may insure its officers and employees against injury or death arising from aircraft accidents incurred while flying on state business in any except regularly scheduled passenger aircraft, subject to the following conditions:

(1) Such insurance shall be provided only to those employees who are directed to fly to fulfill their work requirements. Such insurance coverage shall not be provided where the use of a privately–owned aircraft is for point–to–point transportation and is a result of a voluntary response from the employee, even though such usage may be advantageous to the State.

(2) Application for such insurance shall be submitted to, and the insurance procured by, the Department of General Services.

(3) The maximum limit of such insurance shall be $15,000 in the case of death or dismemberment for each officer and employee.

NOTE: Authority cited: Section 13920, Government Code. Reference: Section 11030, Government Code.

HISTORY

1. Amendment of subsection (b)(1) filed 12–8–80; effective thirtieth day thereafter (Register 80, No. 50). For prior history, see Register 79, No. 23.
2. Editorial reprinting of text deleted in error in Register 84, Nos. 8 and 12 (Register 84, No. 15).

§ 714. Transportation by Automobile.

(a) When a claimant uses a privately owned vehicle on state businesses he or she will be allowed to claim and to be reimbursed at a rate of 50.5 cents per mile.

(b) When a claimant uses a privately owned vehicle to travel to or from a common carrier terminal, and the vehicle is not parked at the terminal during the period of absence, the claimant may claim double the number of miles between the terminal and the claimants' headquarters or residence, whichever is less, while the employee occupies the vehicle. If the employee begins travel more than one (1) hour before he or she normally leaves home, or on a regularly scheduled day off, mileage may be computed from his or her residence.

(c) Ferry, bridge, or toll road charges shall be allowed.

(d) Charges shall be allowed for necessary parking while on state business for:

(1) Day parking when on trips away from the headquarters office and residence.

(2) Overnight public parking when on trips away from the headquarters city and city of residence. Claim should not be made if expense–free overnight parking is available.

(3) Day parking adjacent to claimant's headquarters, provided that claimant had other reimbursable private car expenses for the same day.

(e) Expenses for gasoline or routine repairs shall not be allowed.

(f) The rates of reimbursement for mileage set out in this section include the cost of maintaining liability insurance at the minimum amount

prescribed by law and collision insurance sufficient to cover the reasonable value of the vehicle, less a standard deductible. When a privately owned vehicle operated by an officer, agent or employee is damaged by collision or receives other accidental damage, reasonable reimbursement for repair shall be allowed under the following conditions:

(1) The damage occurred while the vehicle was being used on official state business with the permission or authorization of his employing agency;

(2) The vehicle was damaged through no fault of the officer, agent, or employee;

(3) The amount claimed is an actual loss to the officer, agent, or employee, which is not recoverable either directly from or through the insurance coverage of any of the parties involved in the accident;

(4) The amount of the loss claimed does not result from a decision of an officer, agent or employee not to maintain collision coverage;

(5) The claim is processed in accordance with the procedures prescribed by the Department of General Services.

(g) Allowance of transportation expenses by privately owned automobile incurred in travel outside the State is limited by these rules and the requirement of the authorization specified in Section 706(d).

(h) The reimbursement rates provided by this regulation apply to private vehicles use on state business occurring on or after January 1, 2008.

NOTE: Authority cited: Section 13920, Government Code. Reference: Sections 1130 and 11340.9, Government Code.

HISTORY

1. Amendment of subsections (b) and (c) filed 2–28–80; designated effective 4–1–80 (Register 80, No. 9). For prior history, see Register 79, No. 29.
2. Amendment of subsections (a)–(c) filed 9–30–82; effective upon filing pursuant to Government Code Section 11346.2(d) (Register 82, No. 40).
3. Editorial reprinting of text deleted in error in Register 84, Nos. 8 and 12 (Register 84, No. 15).
4. Amendment of section and NOTE filed 10–12–2006; operative 10–12–2006 pursuant to Government Code section 11343.4. Submitted to OAL for printing only pursuant to the exemption from OAL review for regulations that establish or fix rates (Government Code section 11340.9) (Register 2006, No. 41).
5. Amendment of subsections (a) and (h) filed 2–28–2007; operative 1–1–2007. Submitted to OAL for printing only pursuant to the exemption from OAL review for regulations that establish or fix rates (Government Code section 11340.9) (Register 2007, No. 9).
6. Amendment of subsections (a) and (h) filed 2–25–2008; operative 1–1–2008. Submitted to OAL for printing only pursuant to the exemption from OAL review for regulations that establish or fix rates (Government Code section 11340.9) (Register 2008, No. 9).

§ 715. Railroad Transportation.

(a) No more than actual fare on any transportation service, in accordance with the latest tariffs at the time the trip was made, shall be allowed. Special rates and round–trip rates shall be used whenever possible.

(b) Reimbursement for roomette Pullman accommodations will be allowed. Where it is necessary to use Pullman accommodations more expensive than a roomette, a full explanation stating the facts constituting the official necessity shall accompany the expense account together with a receipted voucher.

(c) Unused portions of railroad and sleeping car tickets are subject to refunds and all steps necessary to secure refunds on such tickets shall be taken.

(d) Any unusual delay or a deviation from the shortest, usually travelled route shall be explained unless connected with return trip out–of–state deportation travel authorized by the Department of Health or the Department of the Youth Authority.

(e) In connection with return trip out–of–state deportation travel authorized by the Department of Health or the Department of the Youth Authority, reimbursement for subsistence and transportation expenses shall be made on the basis of shortest usually travelled routes, conventional train time, first class fare, and lower standard Pullman rates as certified to by a railroad passenger agent.

(f) Meals incurred while on overnight train travel will be reimbursed in accordance with Section 706(c).

(g) Tickets for rail transportation or Pullman accommodations may be purchased (1) by the individual, (2) by credit card, or (3) ticket order. If purchased by credit card, or by ticket order this fact should be noted on the individual's expense claim.

HISTORY

1. Amendment filed 4–24–70; designated effective 7–1–70 (Register 70, No. 17). For history of former section, see Register 64, No. 5.
2. Amendment of subsection (f) filed 8–12–76 as an emergency; designated effective 9–1–76 (Register 76, No. 33).
3. Certificate of Compliance filed 10–15–76 (Register 76, No. 42).
4. Amendment of subsections (d) and (e) filed 2–25–77; effective thirtieth day thereafter (Register 77, No. 9).
5. Editorial reprinting of text deleted in error in Register 84, Nos. 8 and 12 (Register 84, No. 15).

§ 716. Allowances for State College Extension Program.

NOTE: Authority cited: Section 13920, Government Code. Reference: Sections 11030 and 13920, Government Code.

HISTORY

1. New section filed 3–3–71; effective thirtieth day thereafter (Register 71, No. 10).
2. Change without regulatory effect repealing section filed 5–13–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 20).

§ 717. Return of Deceased Employees.

When a state officer or employee dies while travelling on official state business, reimbursement may be claimed for actual and reasonable expenses incurred in returning the remains to the place of burial, up to the amount necessary to return the remains to the official headquarters of the deceased. Claims for the reimbursement of such expenses shall be submitted to the State Controller by the person responsible for payment of the funeral expenses. Each claim shall bear a certification by the appointing power that the employee was travelling on official state business at the time of his death. Actual costs of the following will be considered necessary travel expenses for which reimbursement will be made.

(a) In all cases, regardless of mode of transportation:

(1) Telephone or telegraph charges for shipment arrangements.

(2) Transportation of the remains to the funeral home, preparing the remains for shipment, not in excess of $1 per 1.6 kilometers (mile) one way.

(b) When a portion of the shipment is by common carrier:

(1) Transportation by common carrier to the receiving point nearest the official headquarters or place of burial, whichever is less.

(2) Transportation not in excess of 50 cents per 1.6 kilometers (mile) one way from a funeral home to a shipping station and from the receiving station determined by paragraph (1) above to the headquarters location or place of burial, as applicable.

(3) Outside transportation case and casket or rental metal transfer case, not to exceed $100 plus taxes.

(c) When shipment is made by funeral coach alone, transportation costs not to exceed 50 cents per 1.6 kilometers (mile) one way, from the pick–up point to the city in which the official headquarters of the deceased was located, or to the place of burial, whichever is the shorter distance.

NOTE: Authority cited: Section 13920, Government Code. Reference: Sections 11030.1, and 19463, Government Code.

HISTORY

1. Amendment filed 5–10–68; designated effective 7–1–68 (Register 68, No. 18).
2. Amendment filed 2–25–77; effective thirtieth day thereafter (Register 77, No. 9).
3. Amendment of subsections (a)(2), (b)(2), and (c) filed 12–29–78 as an emergency; designated effective 1–1–79. Certificate of Compliance included (Register 78, No. 52).
4. Editorial reprinting of text deleted in error in Register 84, Nos. 8 and 12 (Register 84, No. 15).

§ 718. Travel Allowances While on Sick Leave, Vacation or Compensating Time Off (CTO).

(a) When a state officer or employee is granted sick leave while away from his headquarters for purposes of state business, such officer or employee may claim reimbursement for travel expenses in accordance with the allowances prescribed by these rules during such sick leave, provided the allowances for travel expenses shall not be authorized for a period exceeding three days. The time limitation prescribed by this section may be exceeded in unusual cases approved by the Board of Control.

(b) When a state officer or employee is authorized time off on vacation or CTO while away from his headquarters on state business, reimbursement for subsistence allowance during such vacation or CTO may not be claimed. The provisions of this section may be waived by an agency for employees claiming other than short-term allowances who are

(1) authorized time off on CTO, or

(2) employees in seasonal agricultural work authorized time off on vacation.

NOTE: Authority cited: Section 13920, Government Code. Reference: Section 19463, Government Code.

HISTORY

1. Editorial reprinting of text deleted in error in Register 84, Nos. 8 and 12 (Register 84, No. 15). For prior history, see Register 78, No. 52.

§ 719. Transportation Expenses of Applicants Who Are Called for Interview.

NOTE: Authority cited: Section 13920, Government Code. Reference: Sections 11030 and 18007, Government Code.

HISTORY

1. Editorial reprinting of text deleted in error in Register 84, Nos. 8 and 12 (Register 84, No. 15). For prior history, see Register 80, No. 9.
2. Change without regulatory effect repealing section filed 5–13–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 20).

§ 720. Nonsalaried Assistance; State Personnel Board.

NOTE: Authority cited: Section 18941, Government Code.

HISTORY

1. Amendment filed 4–7–66; effective thirtieth day thereafter (Register 66, No. 9).
2. Amendment of subsection (a) and new NOTE: filed 2–25–77; effective thirtieth day thereafter (Register 77, No. 9).
3. Editorial reprinting of text deleted in error in Register 84, Nos. 8 and 12 (Register 84, No. 15).
4. Change without regulatory effect repealing section filed 5–13–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 20).

Article 8.1. Moving and Relocation Expenses

§ 732. Scope.

NOTE: Authority cited: Section 18006, Government Code. Reference: Section 18006, Government Code.

HISTORY

1. New Article 8.1 (§§ 734 through 739) filed 12–23–60; designated effective 2–1–61 (Register 60, No. 25). (Former Sections 724, 724.5 and 728 amended and embraced in new sections 735, 737 and 738. For history of former sections, see Registers 57, No. 20; 58, No. 20; 60, No. 18.)
2. Repealer of Sections 734–737 and new Sections 732–737 filed 12–10–74 as an emergency; designated effective 1–1–75. Certificate of Compliance included (Register 74, No. 50). For history of former sections, see Register 63, Nos. 14 and 18; Register 64, No. 4; Register 65, No. 8; Register 67, No. 20; Register 71, No. 4; Register 72, Nos. 9 and 45; Register 73, Nos. 1 and 37.
3. Amendment of NOTE: filed 2–25–77; effective thirtieth day thereafter (Register 77, No. 9)
4. Amendment filed 6–8–79 as an emergency; designated effective 7–1–79. Certificate of Compliance included (Register 79, No. 23).
5. Amendment filed 6–21–79; effective thirtieth day thereafter (Register 79, No. 25).
6. Editorial correction of Authority cite (Register 95, No. 6).
7. Change without regulatory effect repealing article 8.1 (sections 732–739) and section filed 5–14–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 20).

§ 733. Reimbursement for Sale of a Residence.

NOTE: Authority cited: Section 18006, Government Code. Reference: Section 18006, Government Code.

HISTORY

1. Amendment of subsection (b) filed 6–8–79 as an emergency; designated effective 7–1–79. Certificate of Compliance included (Register 79, No. 23).
2. Change without regulatory effect repealing section filed 5–14–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 20).

§ 734. Settlement of a Lease.

HISTORY

1. Change without regulatory effect repealing section filed 5–14–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 20).

§ 735. Expenses for Moving Household Effects.

HISTORY

1. Amendment filed 7–23–75 as an emergency; effective upon filing (Register 75, No. 30).
2. Certificate of Compliance filed 11–18–75 (Register 75, No. 47).
3. Amendment filed 7–16–76; effective thirtieth day thereafter (Register 76, No. 29).
4. Change without regulatory effect repealing section filed 5–14–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 20).

§ 735.1. Reimbursement for Moving Household Effects.

NOTE: Authority cited: Section 18006, Government Code. Reference: Section 18006, Government Code.

HISTORY

1. New section filed 7–23–75 as an emergency; effective upon filing (Register 75, No. 30).
2. Certificate of Compliance filed 11–18–75 (Register 75, No. 47).
3. Amendment filed 7–16–76; effective thirtieth day thereafter (Register 76, No. 29).
4. Amendment filed 6–8–79 as an emergency; designated effective 7–1–79 (Register 79, No. 23). Certificate of Compliance included.
5. Change without regulatory effect repealing section filed 5–14–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 20).

§ 735.2. Reimbursement for Movement of a Trailer Coach.

NOTE: Authority cited: Section 18006, Government Code. Reference: Section 18006, Government Code.

HISTORY

1. New section filed 7–23–75 as an emergency; effective upon filing (Register 75, No. 30).
2. Certificate of Compliance filed 11–18–75 (Register 75, No. 47).
3. Amendment of Subsection (e)(1) filed 6–4–76; effective thirtieth day thereafter (Register 76, No. 23).
4. Amendment filed 6–8–79 as an emergency; designated effective 7–1–79 (Register 79, No. 23). Certificate of Compliance included.
5. Change without regulatory effect repealing section filed 5–14–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 20).

§ 736. Allowance for Miscellaneous Expenses.

NOTE: Authority cited: Section 18006, Government Code. Reference: Section 18006, Government Code.

HISTORY

1. Amendment filed 6–8–79 as an emergency; designated effective 7–1–79 (Register 79, No. 23). Certificate of Compliance included.
2. Change without regulatory effect repealing section filed 5–14–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 20).

§ 737. Relocation Allowance.

NOTE: Authority cited: Section 18006, Government Code. Reference: Section 18006, Government Code.

HISTORY

1. Amendment filed 12–12–75; effective thirtieth day thereafter (Register 75, No. 50).

2. Amendment filed 11–26–76; designated effective 1–1–77 (Register 76, No. 48).
3. Amendment of subsection (a)(1) filed 12–29–76 as an emergency; designated effective 1–1–77 (Register 77, No. 1).
4. Certificate of Compliance filed 2–25–77 (Register 77, No. 9).
5. Amendment of subsection (a) filed 6–8–79 as an emergency; designated effective 7–1–79 (Register 79, No. 23). Certificate of Compliance included.
6. Editorial reprinting of text deleted in error in Register 84, Nos. 8 and 12 (Register 84, No. 15).
7. Change without regulatory effect repealing section filed 5–14–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 20).

§ 738. Travel and Moving Expenses of Persons Who Change Their Place of Residence to Accept Employment with the State.

NOTE: Authority cited: Sections 13920 and 18007, Government Code. Reference: Section 18007, Government Code.

HISTORY

1. Amendment filed 5–19–67; designated effective 7–1–67 (Register 67, No. 20).
2. Amendment of subsection (a) filed 12–4–69 as procedural and organizational; effective upon filing (Register 69, No. 49).
3. Amendment of subsection (c) filed 12–10–74 as an emergency; designated effective 1–1–75. Certificate of Compliance included (Register 74, No. 50).
4. New NOTE: filed 2–25–77; effective thirtieth day thereafter (Register 77, No. 9).
5. Amendment of subsection (e) filed 8–31–79; designated effective 9–1–79 (Register 79, No. 35).
6. Amendment of subsection (a) filed 2–28–80; designated effective 4–1–80 (Register 80, No. 9).
7. Change without regulatory effect repealing section filed 5–14–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 20).

§ 739. Payment of Claims for Moving and Relocation Expenses.

HISTORY

1. Amendment filed 10–17–63 as procedural and organizational; effective upon filing (Register 63, No. 18).
2. Amendment of subsection (c) filed 11–1–72 as an emergency; effective upon filing (Register 72, No. 45).
3. Certificate of Compliance filed 1–3–73 (Register 73, No. 1).
4. New subsection (d) filed 12–10–74 as an emergency; designated effective 1–1–75. Certificate of Compliance included (Register 74, No. 50).
5. Change without regulatory effect repealing section filed 5–14–96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 20).

Article 8.5. Community Relations Expenses—State University and Colleges Presidents

§ 740. General Provisions.

NOTE: Authority cited for Article 8.5 (Sections 740 through 744): Sections 13920 and 13921, Government Code.

HISTORY

1. Amendment of Article 8.5 (Sections 740 through 744) filed 5–10–68; designated effective 7–1–68 (Register 68, No. 18). For prior history, see Register 59, Nos. 14 and 17, 61, No. 24 and 66, No. 14.
2. Amendment filed 2–25–77; effective thirtieth day thereafter (Register 77, No. 9).
3. Change without regulatory effect repealing section (Register 87, No. 44).

§ 741. Memberships.

HISTORY

1. Amendment filed 2–25–77; effective thirtieth day thereafter (Register 77, No. 9).
2. Change without regulatory effect repealing section (Register 87, No. 44).

§ 742. Official Activities.

HISTORY

1. Amendment of subsection (a)(3) filed 2–25–77; effective thirtieth day thereafter (Register 77, No. 9).
2. Amendment of subsection (a)(2) filed 3–23–78; designated effective 5–1–78 (Register 78, No. 12).
3. Change without regulatory effect repealing section (Register 87, No. 44).

§ 743. Official Guests.

HISTORY

1. Amendment of subsections (b), (d) and (e) filed 8–12–76 as an emergency; designated effective 9–1–76 (Register 76, No. 33).
2. Certificate of Compliance filed 10–15–76 (Register 76, No. 42).
3. Amendment filed 2–25–77; effective thirtieth day thereafter (Register 77, No. 9).
4. Change without regulatory effect repealing section (Register 87, No. 44).

§ 744. Exceptions.

HISTORY

1. Amendment filed 2–25–77; effective thirtieth day thereafter (Register 77, No. 9).
2. Change without regulatory effect repealing section (Register 87, No. 44).

Article 8.6. Community Relations Expenses of the Chancellor of the California State University and Colleges

§ 745. General Provisions.

HISTORY

1. Amendment of Article 8.6 (Sections 745 through 749) filed 5–10–68; designated effective 7–1–68 (Register 68, No. 18). For prior history, see Registers 64, No. 5 and 66, No. 14.
2. Amendment filed 2–25–77; effective thirtieth day thereafter (Register 77, No. 9).
3. Change without regulatory effect repealing section (Register 87, No. 44).

§ 746. Memberships.

HISTORY

1. Amendment filed 2–25–77; effective thirtieth day thereafter (Register 77, No. 9).
2. Change without regulatory effect repealing section (Register 87, No. 44).

§ 747. Official Activities.

HISTORY

1. Amendment of subsection (a)(3) filed 2–25–77; effective thirtieth day thereafter (Register 77, No. 9).
2. Amendment of subsection(a)(4) filed 3–23–78; designated effective 5–1–78 (Register 78, No. 12).
3. Change without regulatory effect repealing section (Register 87, No. 44).

§ 748. Official Guests.

HISTORY

1. Amendment filed 8–12–76 as an emergency; designated effective 9–1–76 (Register 76, No. 33).
2. Certificate of Compliance filed 10–15–76 (Register 76, No. 42).
3. Change without regulatory effect repealing section (Register 87, No. 44).

§ 749. Exceptions.

HISTORY

1. Change without regulatory effect repealing section (Register 87, No. 44).

Article 9. Telephone and Telegraph Charges

HISTORY

1. Repealer of Article 9 (Sections 50, 751, 754, 755, 756) filed 4–13–70 as procedural and organizational; effective upon filing (Register 70, No. 16). For prior history, see Register 67, No. 20.

Article 10. Agents Transporting Prisoners, Patients, and Wards

§ 775. Construction and Effect.

The provisions of Article 8, Traveling Expenses, govern the charges and expenses of agents transporting prisoners, patients, and wards, except to the extent that Article 8 is modified by this article.

NOTE: Authority cited for Article 10: Section 13920, Government Code.

HISTORY

1. Amendment of Article 10 filed 5–19–67; designated effective 7–1–67 (Register 67, No. 20). For prior history see Registers 64, No. 6; 66, No. 5; 66, No. 45.

2. Amendment of NOTE: filed 2–25–77; effective thirtieth day thereafter (Register 77, No. 9).

§ 776. Claims of Sheriffs.

(a) General Provisions. Sheriffs are entitled to reimbursement for expenses incurred in the transportation of prisoners, patients, or wards to state institutions except in the case of transportation of criminal insane to state hospitals or placing a defendant in a diagnostic facility, which is chargeable to the county.

(b) Allowable Expenses. The general traveling expense rules of the State Board of Control will be followed in presenting claims with the following limitations:

(1) Subsistence allowances shall be in accordance with Rule 706(a)(1), Short–Term Allowance, and Rule 706(c), Computation of Allowances, except that no per diem shall be paid for any length of travel which totals less than 8 hours. Meal subsistence when the travel time is more than 4 but less than 8 hours will be paid according to the rate established in Rule 706(c), Business Related Meals. Subsistence may be claimed for each county employee who is actually transporting prisoners, patients, or wards and any non–county employee who may act as a matron.

(2) Any salary allowance reimbursement to a non–county employee acting as a matron shall be computed at the minimum entry level hourly rate for a comparable county employee.

(3) Distance expenses will be paid for total round trip distance at the rate of 18.5 cents per 1.6 kilometer (mile). The same rate shall be paid regardless of type of vehicle.

(4) A subsistence allowance of $1.75 per person per meal may be claimed for each prisoner, patient, or ward being transported only when the time elapsed is in excess of 4 hours one way.

(5) Bus or train. When transportation is by bus or train, reimbursement shall be based on either (A) or (B) below providing the sheriff indicates on the claim the mode of transportation; i.e., regularly scheduled bus, regularly scheduled train, chartered bus, or county–owned bus. The allowances provided in subsections (1) through (4) above may also be claimed if otherwise allowable.

(A) When transportation is by regularly scheduled bus or train, the actual and necessary cost of such transportation, not to exceed one first class, round–trip fare for each deputy (and matron, if necessary) and one first class, one–way fare for each patient or prisoner transported, may be claimed. The actual and necessary cost of such transportation may include taxi fares incurred at locations other than the county seat of the committing county if supported by receipt. Pullman charges are not allowed.

(B) When transportation is by chartered or county–owned bus, reimbursement may be claimed according to the mileage allowance referenced in(3) above.

(6) Aircraft. When transportation is by scheduled airline, reimbursement shall be based on Rule 713(a), Scheduled Airline. When transportation is by chartered aircraft, reimbursement will be for the actual cost not to exceed the equivalent cost of scheduled airlines' fares.

(7) Ambulance. When transportation is by ambulance, reimbursement shall be based on the actual cost of ambulance service. The allowances provided in subsections (b)(1) through (b)(4) above may also be claimed if otherwise allowable.

(c) Submissions of Claims.

(1) Form. Claims for payment of expenses shall be made on forms provided by the State Controller.

(2) Submission.

(A) Claims for transportation of persons delivered directly to institutions under the jurisdiction of the Department of Corrections and Department of the Youth Authority, shall be filed with the State Controller, Sacramento.

(B) Claims for transportation of persons delivered directly to institutions under the jurisdiction of the Department of Mental Health or the Department of Developmental Services shall be filed in duplicate with the Department of Mental Health or the Department of Developmental Services, Sacramento.

(C) Claims for the return of escapees or parolees to institutions under the jurisdiction of the Department of the Youth Authority, Department of Corrections, and Department of Mental Health or the Department of Developmental Services shall be filed in duplicate with the institution concerned.

(3) Vouchers. The vouchers required to be submitted with such claims are:

(A) Receipt from the institution showing delivery of prisoner, patient, or ward, code section under which committed and names of all persons by whom delivery was made.

(B) Receipt for cost of ambulance when trip is made by ambulance.

(C) Receipt for taxi fare when trip is made by regularly scheduled bus or train.

(D) Any other receipts or vouchers which may be applicable under Rule 710, Receipts or Vouchers.

(d) Probation Officers and Others. Claims for transportation expenses by probation and parole officers, or others, where authorized by law, shall be governed by these rules. Any such claim shall be accompanied by a copy of the court order designating the claimant to make the delivery.

NOTE: Authority cited: Sections 13920 and 26749, Government Code. Reference: Section 26749, Government Code and Sections 1203.03(d) and 1373, Penal Code.

HISTORY

1. Amendment of subsections (a), (b)(1), (b)(3), (c)(2)(B) and (C) filed 2–25–77; effective thirtieth day thereafter (Register 77, No. 9). For prior history, see Register 76, No. 42.
2. Editorial correction of subsection (b)(1) (Register 77, No. 48).
3. Amendment of subsection (c) filed 6–8–79 as an emergency; designated effective 7–1–79 (Register 79, No. 23). Certificate of Compliance included.
4. Editorial correction of subsection (c)(3), (Register 79, No. 29).
5. Amendment of subsection (b)(3) filed 3–12–80; effective thirtieth day thereafter (Register 80, No. 11).

§ 777. Claims of Agents.

Claims of agents returning fugitives from justice or prisoners or wards detained in other states.

(a) Warrant or Equivalent Document. Claims under this section shall not be allowed unless a warrant for the return of the prisoner or ward has been issued by the Governor or the Director of the Youth Authority or unless the agent has been designated by the Administrator, Interstate Probation and Parole Compacts, to return the prisoner or ward. Such warrant or designation may be issued before or after the claimed expenses were incurred.

(b) Certificate. The claim of the agent shall not be allowed unless accompanied by one of the following, as applicable:

(1) Where the prisoner or ward has not been arraigned or placed on trial after his return: a certificate of an authorized representative of the Director of Corrections, Community Release Board, or Youth Authority that the prisoner or ward has been convicted of crime; has violated his probation, parole, or bail, or has escaped from the custody of state authorities; and/or has been returned to the custody of the state agency represented by the certifying official.

(2) A certificate from an authorized representative of the sister state verifying the necessity to present witnesses or evidence in the sister state to gain the release of the fugitive.

(3) A certificate with advance approval by the Governor authorizing the appearance of witnesses, in unusual cases where the interest of Justice would be served, to appear in the sister state on behalf of the fugitive in opposition to his extradition.

(4) Where the prisoner or ward has not been returned: a certificate of the agent stating fully the reasons for the failure to make such a return.

(5) Where the prisoner or ward is returned to another state under the provisions of Section 1389 of the Penal Code after having been brought back from that state and tried in California, a receipt for the prisoner or ward from the agency or institution in the other state to which he was returned.

(c) Allowable Expenses. The following expenses shall be allowed:

(1) Statutory fees charged by other states in connection with the detention and surrender of the prisoner or ward.

(2) Necessary living expenses of the prisoner or ward only for the period from the date of detention until the arrival of the agent to take him into custody.

(3) When rail transportation is used, expenses for compartment accommodations on the return trip with the prisoner or ward.

(4) Expenses of an assistant when authorized by appointment by the Governor in extradition cases or by the Administrator, Interstate Probation and Parole Compacts, in detainer cases.

(5) Attorney fees, only when authorized in advance by the Attorney General.

(6) Reasonable fees for the assistance of porters in watching prisoners en route.

(7) Expenses for use of chartered aircraft not to exceed the equivalent cost of scheduled airline fares.

(8) Expenses for use of private automobile, at the rate of 18.5 cents per 1.6 kilometer (mile).

(d) Route. The agent shall take the most direct and economical route available. If delays occur, a full explanation stating the reason, length of time delayed, and all other relevant factors shall accompany the claim. If the explanation is satisfactory, the additional expense shall be allowed. No expenses incurred in Sacramento en route shall be allowed.

NOTE: Authority cited: Section 13920, Government Code; Section 1557, Penal Code. Reference: Sections 1389 and 1557, Penal Code; and Section 1300, Welfare and Institutions Code.

HISTORY

1. Amendment of subsection (c)(8) filed 11-7-69; designated effective 1-1-70 (Register 69, No. 45).
2. Amendment of subsection (b) filed 5-29-75; effective thirtieth day thereafter (Register 75, No. 22).
3. Amendment and new NOTE: filed 2-25-77; effective thirtieth day thereafter (Register 77, No. 9).
4. Amendment of subsection (b) filed 6-8-79 as an emergency; designated effective 7-1-79 (Register 79, No. 23). Certificate of Compliance included.
5. Amendment of subsection (c)(8) filed 3-12-80; effective thirtieth day thereafter (Register 80, No. 11).

§ 778. Claims of Non-State Agents Transporting State Fugitives, Prisoners or Wards Detained in Other States Pursuant to Agreements Entered into Under the Computer Assisted Prisoner Transportation Index Service.

(a) Agent Designation. Claims under this section shall not be allowed unless the agent has been designated by the Administrator, Interstate Probation and Parole Compacts, or the Governor to return the prisoner or ward. Such designation may be issued before or after the claimed expenses were incurred.

(b) Regular Extraditions. The Governor's Office shall approve all claims submitted by local agencies in regular extraditions.

(c) Certificate. The claim of the agent shall not be allowed unless accompanied by one of the following, as applicable, except as in (b) above.

(1) Where the prisoner or ward has not been arraigned or placed on trial after his return: a certificate of an authorized representative of the Director of Corrections, Community Release Board, or Youth Authority that the prisoner or ward has been convicted of crime; has violated his probation, parole, or bail, or has escaped from the custody of state authorities; and/or has been returned to the custody of the state agency represented by the certifying official.

(2) A certificate from an authorized representative of the sister state verifying the necessity to present witnesses or evidence in the sister state to gain the release of the fugitive.

(3) A certificate with advance approval by the Governor authorizing the appearance of witnesses, in unusual cases where the interest of justice would be served, to appear in the sister state on behalf of the fugitive in opposition to his extradition.

(4) Where the prisoner or ward is returned to another state under the provisions of Section 1389 of the Penal Code after having been brought back from that state and tried in California, a receipt for the prisoner or ward from the agency or institution in the other state to which he was returned.

(d) Allowable Expenses. The following expenses shall be allowed:

(1) Statutory fees charged by other states in connection with the detention and surrender of the prisoner or ward.

(2) Necessary living expenses of the prisoner or ward only for the period from the date of detention until the arrival of the agent to take him into custody.

(3) Subsistence expenses for the agent in accordance with Section 706(c) for not more than 24 hours unless approved by the Controller's Office because of extenuating circumstances.

(4) When rail transportation is used, expenses for compartment accommodations on the return trip with the prisoner or ward.

(5) Expenses of an assistant when authorized by appointment by the Governor in extradition cases or by the Administrator, Interstate Probation and Parole Compacts, in detainer cases.

(6) Attorney fees, only when authorized in advance by the Attorney General.

(7) Reasonable fees for the assistance of porters in watching prisoners en route.

(8) Expenses for use of chartered aircraft not to exceed the equivalent cost of scheduled airline fares, except when the use of a chartered or agency-owned aircraft will reduce subsistence, care rental and other expenses to an amount below the combined cost of scheduled airline fares, car rental, subsistence, and other expenses for agents, prisoners or wards.

(9) Expenses for use of private automobile, at the rate of 18.5 cents per 1.6 kilometer (mile).

(e) Route. The agent shall take the most direct and economical route available. If delays occur, a full explanation stating the reason, length of time delayed, and all other relevant factors shall accompany the claim. If the explanation is satisfactory, the additional expense shall be allowed.

NOTE: Authority cited: Section 13920, Government Code, and Section 1557, Penal Code. Reference: Sections 1389 and 1557, Penal Code; and Section 1300, Welfare and Institutions Code.

HISTORY

1. New section filed 12-8-80; effective thirtieth day thereafter (Register 80, No. 50).

Article 11.

§ 790. Sales Tax Refunds on Sales of Dairy Cattle.

HISTORY

1. Repealer filed 3-1-61; designated effective 4-1-61 (Register 61, No. 5).

Article 12.

§ 795. Rules Adopted by Adjutant General and Approved by the Board of Control Pursuant to Provisions of Chapter 19, Statutes of First Extraordinary Session of 1941-42.

HISTORY

1. Repealer filed 3-1-61; designated effective 4-1-61 (Register 61, No. 5).

Article 13. Rental Rates for Residences of Superintendents of State Institutions and Wardens of Prisons

§ 800. Scope and Definition.

NOTE: Authority cited for Article 13 (§§800 to 808, inclusive): Sections 13920 and 13921, Government Code.

HISTORY

1. New Article 13 (§§800 to 808, inclusive) filed 11-9-49, designated to be effective 1-1-50 (Register 18, No. 5).
2. Amendment filed 11-9-53 as an emergency; designated effective 11-15-53 (Register 53, No. 20).

3. Amendment filed 3–25–54 as an emergency; designated effective 4–1–54 (Register 54, No. 7).
4. Amendment filed 4–28–54 as an emergency; designated effective 5–1–54 (Register 54, No. 10).
5. Repealer filed 1–11–60; designated effective 3–1–60 (Register 60, No. 2).

§ 801. Commissary Purchases: Determination of Privilege.

HISTORY

1. Repealer filed 5–20–52; effective thirtieth day thereafter (Register 28, No. 5).

§ 802. Charges for Meals.

HISTORY

1. Repealer filed 5–20–52; effective thirtieth day thereafter (Register 28, No. 5).

§ 803. Charges for Meals Served Private Employees.

HISTORY

1. Repealer filed 5–20–52; effective thirtieth day thereafter (Register 28, No. 5).

§ 804. Guest Meals.

HISTORY

1. Repealer filed 5–20–52; effective thirtieth day thereafter (Register 28, No. 5).

§ 805. Meals in Institutional Dining Facilities.

HISTORY

1. Repealer filed 5–20–52; effective thirtieth day thereafter (Register 28, No. 5).

§ 806. Laundering and Dry Cleaning Charges.

HISTORY

1. Repealer filed 7–1–53 as an emergency; effective 10–1–53 (Register 53, No. 11).

§ 807. House Rentals.

NOTE: Additional authority cited: Section 13924, Government Code.

HISTORY

1. Amendment filed 6–12–62; effective thirtieth day thereafter (Register 62, No. 12). For prior history see Register 60, No. 17.
2. Repealer filed 12–30–63 as an emergency; designated effective 1–1–64 (Register 64, No. 1).
3. Certificate of Compliance—Sec. 11422.1, Gov. Code, filed 3–9–64 (Register 64, No. 6).

§ 808. Provision for Hearing.

HISTORY

1. Section adopted 11–7–49 (Register 18, No. 5).
2. Repealer filed 12–30–63 as an emergency; designated effective 1–1–64 (Register 64, No. 1).
3. Certificate of Compliance—Sec. 11422.1, Gov. Code, filed 3–9–64 (Register 64, No. 6).

Article 14. Employee Merit Award Program

§ 825. Definitions.

NOTE: Authority cited for Article 14: Section 13926, Government Code. Additional authority cited: Sections 13920 and 13921, Government Code.

HISTORY

1. Editorial reprinting of text deleted in error in Register 84, Nos. 8 and 12 (Register 84, No. 15). For prior history, see Register 77, No. 21.
2. Change without regulatory effect repealing section (Register 87, No. 44).

§ 826. State Merit Award Board.

HISTORY

1. Amendment filed 10–17–63 as procedural and organizational; effective upon filing (Register 63, No. 18).
2. Amendment filed 12–9–65; effective thirtieth day thereafter (Register 65, No. 24).
3. Amendment filed 7–22–70; effective thirtieth day thereafter (Register 70, No. 30).
4. Editorial reprinting of text deleted in error in Register 84, Nos. 8 and 12 (Register 84, No. 15).
5. Change without regulatory effect repealing section (Register 87, No. 44).

§ 827. Merit Award Administration.

NOTE: Authority cited: Section 13926, Government Code. Reference: Assembly Concurrent Resolution 1/27/78.

HISTORY

1. New subsection (f) filed 1–2–79; effective thirtieth day thereafter (Register 78, No. 52). For prior history, see Register 68, No. 37.
2. Editorial reprinting of text deleted in error in Register 84, Nos. 8 and 12 (Register 84, No. 15).
3. Change without regulatory effect repealing section (Register 87, No. 44).

§ 828. Eligibility for Employee Suggestion Awards.

NOTE: Authority cited: Section 13926, Government Code. Reference: Section 13926(a), Government Code.

HISTORY

1. Amendment filed 1–2–79; effective thirtieth day thereafter (Register 78, No. 52). For prior history, see Register 66, No. 21.
2. Editorial reprinting of text deleted in error in Register 84, Nos. 8 and 12 (Register 84, No. 15).
3. Change without regulatory effect repealing section (Register 87, No. 44).

§ 829. Employee Suggestion Procedures.

HISTORY

1. Editorial reprinting of text deleted in error in Register 84, Nos. 8 and 12 (Register 84, No. 15). For prior history, see Register 67, No. 40.
2. Change without regulatory effect repealing section (Register 87, No. 44).

§ 830. Recommendations of Awards for Special Acts, Special Services, or Superior Accomplishments.

HISTORY

1. New section filed 11–21–57; designated effective 1–2–58 (Register 57, No. 20).
2. Amendment filed 11–22–61; effective thirtieth day thereafter (Register 61, No. 23).
3. Editorial reprinting of text deleted in error in Register 84, Nos. 8 and 12 (Register 84, No. 15).
4. Change without regulatory effect repealing section (Register 87, No. 44).

§ 831. Cash Awards.

NOTE: Authority cited: Section 13926, Government Code. Reference: Section 13926, Government Code.

HISTORY

1. Amendment filed 2–25–77; effective thirtieth day thereafter (Register 77, No. 9). For prior history, see Register 75, No. 24.
2. Amendment of subsections (a)–(d) and new subsection (j) filed 1–2–79; effective thirtieth day thereafter (Register 78, No. 52).
3. Editorial reprinting of text deleted in error in Register 84, Nos. 8 and 12 (Register 84, No. 15).
4. Change without regulatory effect repealing section (Register 87, No. 44).

Article 15. Use of State-Owned Vehicles

§ 840. General Provisions.

NOTE: Authority cited for Article 15: Sections 13950 through 13955, Government Code.

HISTORY

1. New Article 15 filed 9–10–52 as an emergency; Sections 840 through 845 and 847 designated to be effective 10–1–52; Section 846 designated to be effective 11–1–52 (Register 29, No. 6).
2. Repealer filed 2–8–72; effective thirtieth day thereafter (Register 72, No. 7).

§ 841. Definitions.

HISTORY

1. Amendment of subsection (e) filed 11–26–76; designated effective 1–1–77 (Register 76, No. 48). For prior history, see Register 72, No. 7.
2. Change without regulatory effect repealing section (Register 87, No. 44).

§ 841.1. State–Owned Vehicles Operated in a Commute Program.

NOTE: Authority cited: Section 13920, Government Code.

HISTORY

1. New section filed 11–26–76; designated effective 1–1–77 (Register 76, No. 48).
2. Change without regulatory effect repealing section (Register 87, No. 44).

§ 842. Misuse.

HISTORY

1. Amendment of subsection (b)(6) filed 12–8–75 as an emergency; effective upon filing (Register 75, No. 50). For prior history, see Register 75, No. 28.
2. Certificate of Compliance filed 2–11–76 (Register 76, No. 7).

3. Repealer of subsection (b)(6) filed 11–26–76; designated effective 1–1–77 (Register 76, No. 48).
4. Change without regulatory effect repealing section (Register 87, No. 44).

§ 843. Actual Costs and Liability Therefor.

HISTORY

1. Amendment filed 2–8–72; effective thirtieth day thereafter (Register 72, No. 7).
2. Editorial correction in title of subsection (d) (Register 72, No. 16).
3. Change without regulatory effect repealing section (Register 87, No. 44).

§ 844. Determination of Misuse and Actual Costs.

HISTORY

1. Amendment filed 10–17–63 as procedural and organizational; effective upon filing (Register 63, No. 18).
2. Amendment filed 2–8–72; effective thirtieth day thereafter (Register 72, No. 7).
3. Change without regulatory effect repealing section (Register 87, No. 44).

§ 845. Supplemental Determination of Actual Costs. Procedure for Supplemental Determination of Actual Costs.

HISTORY

1. Change without regulatory effect repealing section (Register 87, No. 44).

§ 845.5. Penalty for Misuse.

NOTE: Authority cited: Section 13920, Government Code. Reference: Section 13951, Government Code.

HISTORY

1. New section filed 9–21–67 as an emergency; effective upon filing (Register 67, No. 38).
2. Certificate of Compliance—Section 11422.1, Gov. Code, filed 12–8–67 (Register 67, No. 49).
3. Amendment filed 2–8–72; effective thirtieth day thereafter (Register 72, No. 7).
4. Change without regulatory effect repealing section (Register 87, No. 44).

§ 846. Automobile Travel Logs.

NOTE: Additional authority cited: Section 13951(c), Government Code.

HISTORY

1. Amendment and new NOTE filed 2–25–77; effective thirtieth day thereafter (Register 77, No. 9). For prior history, see Register 72, No. 1.
2. Change without regulatory effect repealing section (Register 87, No. 44).

§ 847. Storage of State–Owned Motor Vehicles.

NOTE: Authority cited: Sections 13920 and 13921, Government Code.

HISTORY

1. Amendment filed 8–22–63; designated effective 10–1–63 (Register 63, No. 14).
2. Amendment filed 10–17–63 as procedural and organizational; effective upon filing (Register 63, No. 18).
3. Amendment filed 12–29–71; designated effective 2–1–72 (Register 72, No. 1).
4. Change without regulatory effect repealing section (Register 87, No. 44).

§ 848. Definition of Passenger Type Motor Vehicles of the Light Class.

NOTE: Authority cited: Section 13920, Government Code; Budget Act. Reference: Budget Act.

HISTORY

1. New section filed 5–19–60; effective thirtieth day thereafter (Register 60, No. 12).
2. Amendment filed 9–22–65 as an emergency; effective upon filing (Register 65, No. 18).
3. Certificate of Compliance—Sec. 11422.1, Gov. Code, filed 10–21–65 (Register 65, No. 20).
4. Amendment filed 6–9–79 as an emergency; designated effective 7–1–79 (Register 79, No. 23). Certificate of Compliance included.
5. Change without regulatory effect repealing section (Register 87, No. 44).

§ 849. Repairs to Vehicles.

HISTORY

1. New section filed 8–22–63; designated effective 10–1–63 (Register 63, No. 14).
2. Amendment filed 10–17–63 as procedural and organizational; effective upon filing (Register 63, No. 18).
3. Repealer filed 12–29–71; designated effective 2–1–72 (Register 72, No. 1).

Article 16. Valuation of Employee Housing

§ 850. Scope.

NOTE: Authority cited: Section 13920, Government Code. Reference: Section 13924, Government Code.

HISTORY

1. Repealer and new section filed 3–31–76 as an emergency; effective upon filing (Register 76, No. 14). For history of former section, see Register 75, No. 50.
2. Certificate of Compliance filed 5–7–76 (Register 76, No. 19).
3. Change without regulatory effect repealing section (Register 87, No. 44).

§ 851. Definitions.

NOTE: Authority cited: Section 13920, Government Code. Reference: Section 13924, Government Code.

HISTORY

1. New section filed 12–23–74; effective thirtieth day thereafter (Register 74, No. 52).
2. Amendment filed 10–2–75 as an emergency; effective upon filing (Register 75, No. 40).
3. Certificate of Compliance filed 12–10–75 (Register 75, No. 50).
4. Change without regulatory effect repealing section (Register 87, No. 44).

§ 852. Monthly Rates.

NOTE: Authority cited: Section 13920, Government Code. Reference: Section 13924, Government Code.

HISTORY

1. Amendment of subsection (c)(2) filed 11–26–76; designated effective 1–1–77 (Register 76, No. 48). For prior history, see Register 75, No. 50.
2. Amendment of subsections (a), (b) and repealer of subsection (d) filed 6–1–78; designated effective 7–1–78 (Register 78, No. 22).
3. Amendment of subsections (a), (b) and new subsection (d) filed 8–25–78 as an emergency; effective upon filing. Certificate of Compliance included (Register 78, No. 34).
4. Change without regulatory effect repealing section (Register 87, No. 44).

§ 853. Dormitory Accommodations.

NOTE: Authority cited: Section 13920, Government Code. Reference: Section 13924, Government Code.

HISTORY

1. Amendment of subsections (b) and (c)(3) filed 6–1–78; designated effective 7–1–78 (Register 78, No. 22). For prior history, see Register 75, No. 50.
2. Amendment of subsections (b) and (c)(3) filed 8–25–78 as an emergency; effective upon filing. Certificate of Compliance included (Register 78, No. 34).
3. Change without regulatory effect repealing section (Register 87, No. 44).

§ 854. Review of Rates.

NOTE: Authority cited: Section 13920, Government Code. Reference: Section 13924, Government Code.

HISTORY

1. New section filed 12–23–74; effective thirtieth day thereafter (Register 74, No. 52).
2. Amendment filed 10–2–75 as an emergency; effective upon filing (Register 75, No. 40).
3. Certificate of Compliance filed 12–10–75 (Register 75, No. 50).
4. Change without regulatory effect repealing section (Register 87, No. 44).

§ 855. Scope.

NOTE: Authority cited: Sections 13920, 13921 and 13924, Government Code.

HISTORY

1. Repealer of Sections 855 through 866 and new Sections 855 through 861 filed 10–13–67; designated effective 1–1–68 (Register 67, No. 41). For prior history, see Register 64, No. 6.
2. Repealer filed 3–31–76 as an emergency; effective upon filing (Register 76, No. 14).
3. Certificate of Compliance filed 5–7–76 (Register 76, No. 19).

§ 856. Definitions.

HISTORY

1. Amendment of subsection (c) filed 5–15–74; designated effective 7–1–74 (Register 74, No. 20). For prior history, see Register 70, No. 28.
2. Repealer filed 3–31–76 as an emergency; effective upon filing (Register 76, No. 14).
3. Certificate of Compliance filed 5–7–76 (Register 76, No. 19).

§ 857. Monthly Rates.

HISTORY

1. Amendment of subsections (b) and (d) filed 8-22-74; effective thirtieth day thereafter (Register 74, No. 34). For prior history, see Register 74, No. 20.
2. Repealer filed 3-31-76 as an emergency; effective upon filing (Register 76, No. 14).
3. Certificate of Compliance filed 5-7-76 (Register 76, No. 19).

§ 858. Dormitory Accommodations.

HISTORY

1. Amendment of subsection (b)(3) filed 7-10-70; designated effective 9-1-70 (Register 70, No. 28).
2. Repealer filed 3-31-76 as an emergency; effective upon filing (Register 76, No. 14).
3. Certificate of Compliance filed 5-7-76 (Register 76, No. 19).

§ 859. Trailer and Mobile Home Charges.

HISTORY

1. Amendment filed 7-10-70; designated effective 9-1-70 (Register 70, No. 28).
2. Amendment filed 5-15-74; designated effective 7- 1-74 (Register 74, No. 20).
3. Repealer filed 3-31-76 as an emergency; effective upon filing (Register 76, No. 14).
4. Certificate of Compliance filed 5-7-76 (Register 76, No. 19).

§ 859.1. Trailer and Mobile Home Charges.

NOTE: Authority cited: Section 13920, Government Code, Reference: Section 13924, Government Code.

HISTORY

1. Amendment of subsections (a) and (b) amendment and renumbering of subsection (c) and renumbering of subsection (d) filed 6-1-78; designated effective 7-1-78 (Register 78, No. 22). For prior history, see Register 76, No. 48.
2. Amendment of subsections (a), (b), repealer of subsections (c), (d) and new subsections (c), (d) filed 8-25-78 as an emergency; effective upon filing. Certificate of Compliance included (Register 78, No. 34).
3. Change without regulatory effect repealing section (Register 87, No. 44).

§ 860. Responsibility of State Agencies for Administering Rental Schedule for Employee Housing.

HISTORY

1. Change without regulatory effect repealing section (Register 87, No. 44).

§ 861. Responsibility of the Department of General Services.

NOTE: Authority cited: Section 13920, Government Code. Reference: Section 13924, Government Code.

HISTORY

1. New section filed 8-25-78 as an emergency; effective upon filing. Certificate of Compliance included. (Register 78, No. 34). For history of former section see Register 78, No. 22.
2. Change without regulatory effect repealing section (Register 87, No. 44).

§ 862. State Policy on Possessory Interest Taxes.

NOTE: Authority cited: Section 13920, Gov. Code. Reference: Section 13924, Gov. Code.

HISTORY

1. New section filed 10-9-69; effective thirtieth day thereafter (Register 69, No. 41).
2. Amendment filed 5-15-74; designated effective 7-1-74 (Register 74, No. 20).
3. Change without regulatory effect repealing section (Register 87, No. 44).

§ 867. Household Furnishings.

HISTORY

1. Formerly Section 865. Amendment renumbering filed 12-30-63 as an emergency; designated effective 1-1-64 (Register 64, No. 1).
2. Certificate of Compliance—Sec. 11422.1, Gov. Code, filed 3-9-64 (Register 64, No. 6).
3. Change without regulatory effect repealing section (Register 87, No. 44).

§ 867.1. Laundry Service.

HISTORY

1. Amendment filed 5-10-68; designated effective 7-1-68 (Register 68, No. 18). For prior history see Register 64, No. 6.
2. Change without regulatory effect repealing section (Register 87, No. 44).

§ 867.2. Dry Cleaning Service.

HISTORY

1. New section filed 5-23-57; designated effective 7-1-57 (Register 57, No. 8).
2. Formerly Section 867. Amendment renumbering filed 12-30-63 as an emergency; designated effective 1-1-64 (Register 64, No. 1).
3. Certificate of Compliance—Sec. 11422.1, Gov. Code, filed 3-9-64 (Register 64, No. 6).
4. Amendment filed 5-10-68; designated effective 7-1-68 (Register 68, No. 11).
5. Change without regulatory effect repealing section (Register 87, No. 44).

Article 16.1. Meals at State Agencies

§ 868. Meals at State Agencies.

NOTE: Authority cited for Article 16.1: Sections 13920 and 13921, Government Code.

HISTORY

1. New subsection (b)(6) filed 11-26-76; designated effective 1-1-77 (Register 76, No. 48). For prior history, see Register 76, No. 42.
2. Amendment of subsection (b)(6) filed 3-1-78; designated effective 4-1-77 (Register 78, No. 9).
3. Editorial correction of designated effective date of filing of 3-1-78 to 4-1-78 (Register 78, No. 9).
4. Change without regulatory effect repealing section (Register 87, No. 44).

Article 17. Bid Protests

§ 870. Requests for Hearings.

NOTE: Authority cited: Sections 13920 and 13921, Government Code.

HISTORY

1. New Article 17 (Sections 870 through 876) filed 9-7-55 as an emergency; designated effective 9-7-55. Amended Article 17 filed 9-12-55 as an emergency; designated effective 9-12-55 (Register 55, No. 14).
2. Amendment filed 10-21-65 as procedural and organizational; effective upon filing (Register 65, No. 20).
3. Change without regulatory effect filed 4-14-87; operative 5-14-87 (Register 87, No. 16).
4. Repealer of article 17 (sections 870-877), repealer of section and new article 17 (sections 870.1-874.1) filed 12-15-97 as interim regulations under Government Code section 11400.20; operative 12-15-97 (Register 97, No. 51).

Subarticle 1. General Provisions

§ 870.1. Applicability.

This article applies to bid protests under Public Contract Code sections 10306 and 12102, subdivision (h).

NOTE: Authority cited: Section 13920, Government Code. Reference: Sections 10306 and 12102(h), Public Contract Code.

HISTORY

1. New subarticle 1 (sections 870.1-870.3) and section filed 12-15-97 as interim regulations under Government Code section 11400.20; operative 12-15-97 (Register 97, No. 51).
2. Interim regulation transmitted to OAL 12-31-98 as a permanent rulemaking and filed 2-17-99; operative 2-17-99 pursuant to Government Code section 11400.20 (Register 99, No. 12).

§ 870.2. Applicable Regulations.

If there is any inconsistency or conflict between the provisions of article 2.5 and this article, the provisions of this article shall apply.

NOTE: Authority cited: Section 13920, Government Code. Reference: Sections 10306 and 12102(h), Public Contract Code.

HISTORY

1. New section filed 12-15-97 as interim regulations under Government Code section 11400.20; operative 12-15-97 (Register 97, No. 51).
2. Interim regulation transmitted to OAL 12-31-98 as a permanent rulemaking and filed 2-17-99; operative 2-17-99 pursuant to Government Code section 11400.20 (Register 99, No. 12).

§ 870.3. Definitions.

(a) As used in this article:

(1) "Bid" shall mean:

(A) an offer in response to a solicitation for materials, supplies, or equipment purchased pursuant to article 3 (commencing with section 10300), chapter 2, part 2, division 2, Public Contract Code; or

(B) an offer in response to a solicitation for electronic data processing or telecommunications goods or services pursuant to chapter 3 (commencing with section 12100) or chapter 3.5 (commencing with section 12120), part 2, division 2, Public Contract Code.

(2) "Bidder" shall mean an individual or entity that submitted a final bid in response to a solicitation that is subject to a protest;

(3) "Declaration" shall mean a written statement that includes the following:

(A) the signature of the person making the statement;

(B) the date on which and the place where it was signed;

(C) a statement substantially similar to: "I declare under penalty of perjury under the laws of California that the foregoing is true and correct."

(4) "Detailed statement of protest" shall mean the written statement specifying the legal and factual basis for the protest under section 872.7;

(5) "Document" shall mean a writing as defined in Evidence Code section 250;

(6) "Party" shall mean:

(A) Procurement;

(B) the state agency procuring the product that is the subject of the solicitation;

(C) the protestant;

(D) the proposed awardee; and

(E) any other bidder that submitted a bid and submitted a written request to be a party, except that a bidder that filed a bid protest shall not be a party in a protest filed by another bidder.

(7) "Procurement" shall mean:

(A) the Department of General Services, Procurement Division or its successor; or

(B) another state agency that has been delegated purchasing authority by the Department of General Services;

(8) "Proposed awardee" shall mean the bidder to whom Procurement intends to award a contract as a result of Procurement's evaluation of the protested solicitation;

(9) "Protest" shall mean a written objection by a bidder to an intended contract award proposed by Procurement that is submitted to Procurement under section 872.1 after the posting of an intent to award.

(11) "Protestant" shall mean a bidder that submitted the bid protest that is the subject of the hearing;

(12) "Response to the detailed statement of protest" shall mean a party's written submission under section 872.8;

(13) "Solicitation" shall mean the process by which Procurement requests bids;

(14) "Solicitation document" shall mean the document that describes the goods or services that are to be purchased and establishes the method that will be used to evaluate bids; and

(15) "Solicitation file" shall mean documents used by Procurement in the procurement process, including documents used to evaluate bidders and select a proposed awardee.

NOTE: Authority cited: Section 13920, Government Code. Reference: Sections 10306 and 12102(h), Public Contract Code.

HISTORY

1. New section filed 12–15–97 as interim regulations under Government Code section 11400.20; operative 12–15–97 (Register 97, No. 51).
2. Interim regulation transmitted to OAL 12–31–98 as a permanent rulemaking with amendments and filed 2–17–99; operative 2–17–99 pursuant to Government Code section 11400.20 (Register 99, No. 12).

§ 871. Definition of Interested Parties.

NOTE: Authority cited: Sections 13920 and 13921, Government Code. Reference: Sections 10306 and 12102(f), Public Contract Code.

HISTORY

1. Amendment filed 10–17–63 as procedural and organizational; effective upon filing (Register 63, No. 18).
2. Amendment filed 10–21–65 as procedural and organizational; effective upon filing (Register 65, No. 20).
3. Change without regulatory effect of subsection (c) filed 4-14-87; operative 5-14-87 (Register 87, No. 16).
4. Repealer filed 12–15–97 as interim regulations under Government Code section 11400.20; operative 12–15–97 (Register 97, No. 51).

Subarticle 2. Requirements for Submissions

§ 871.1. Document Standards.

(a) All documents submitted to the board shall be:

(1) typewritten or computer generated;

(2) standard 8–1/2 by 11 inches each page; and

(3) legible.

(b) A document submitted as an exhibit during a hearing need not comply with subsection (a)(1) or (2).

(c) The board may refuse to accept any document that does not comply with this section.

NOTE: Authority cited: Section 13920, Government Code. Reference: Sections 10306 and 12102(h), Public Contract Code.

HISTORY

1. New subarticle 2 (sections 871.1–871.4) and section filed 12–15–97 as interim regulations under Government Code section 11400.20; operative 12–15–97 (Register 97, No. 51).
2. Interim regulation transmitted to OAL 12–31–98 as a permanent rulemaking with amendments and filed 2–17–99; operative 2–17–99 pursuant to Government Code section 11400.20 (Register 99, No. 12).

§ 871.2. Documents Submitted by Facsimile.

(a) Documents that exceed ten pages, including any attachments or exhibits, shall not be submitted to the board by facsimile.

(b) A document submitted to the board by facsimile in violation of subsection (a) shall not be accepted.

(c) The first page of a facsimile transmission shall be a cover page that includes:

(1) the name of the sender;

(2) the name and phone number of a person to be contacted in case of transmission problems; and

(3) the total number of pages transmitted, including the cover page.

(d) A party submitting a document by facsimile has the burden of proving that the entire document was successfully transmitted to the board.

NOTE: Authority cited: Section 13920, Government Code. Reference: Sections 10306 and 12102(h), Public Contract Code.

HISTORY

1. New section filed 12–15–97 as interim regulations under Government Code section 11400.20; operative 12–15–97 (Register 97, No. 51).
2. Interim regulation transmitted to OAL 12–31–98 as a permanent rulemaking with amendments and filed 2–17–99; operative 2–17–99 pursuant to Government Code section 11400.20 (Register 99, No. 12).

§ 871.3. Copies of Submissions.

(a) A party shall provide the board with one original and three copies of any document, including any attachments to the document, submitted to the board.

(b) The original document that is submitted by facsimile and three copies of the document shall be submitted to the board within two working days of the facsimile transmission.

NOTE: Authority cited: Section 13920, Government Code. Reference: Sections 10306 and 12102(h), Public Contract Code.

HISTORY

1. New section filed 12–15–97 as interim regulations under Government Code section 11400.20; operative 12–15–97 (Register 97, No. 51).
2. Interim regulation transmitted to OAL 12–31–98 as a permanent rulemaking and filed 2–17–99; operative 2–17–99 pursuant to Government Code section 11400.20 (Register 99, No. 12).

§ 871.4. Service on Parties.

(a) A party who submits a document, including correspondence, to the board shall send each party a copy.

(b) A party shall include a declaration of proof of service that the party complied with this section.

(c) This section shall not apply to the submission of the solicitation file to the board under section 872.4.

NOTE: Authority cited: Section 13920, Government Code. Reference: Sections 10306 and 12102(h), Public Contract Code.

HISTORY

1. New section filed 12–15–97 as interim regulations under Government Code section 11400.20; operative 12–15–97 (Register 97, No. 51).
2. Interim regulation transmitted to OAL 12–31–98 as a permanent rulemaking and filed 2–17–99; operative 2–17–99 pursuant to Government Code section 11400.20 (Register 99, No. 12).

§ 872. Notice of Hearing.

NOTE: Authority cited:Sections 13920 and 13921, Government Code. Reference: Sections 10306 and 12102(f), Public Contract Code.

HISTORY

1. Amendment filed 5–19–61; effective thirtieth day thereafter (Register 61, No. 10).
2. Amendment filed 10–21–65 as procedural and organizational; effective upon filing (Register 65, No. 20).
3. Amendment filed 2–25–77; effective thirtieth day thereafter (Register 77, No. 9).
4. Change without regulatory effect filed 4-14-87; operative 5-14-87 (Register 87, No. 16).
5. Repealer filed 12–15–97 as interim regulations under Government Code section 11400.20; operative 12–15–97 (Register 97, No. 51).

Subarticle 3. Pre–Hearing Procedure

§ 872.1. Filing Protest with Procurement.

(a) A protestant shall file a notice of protest of the proposed award of a contract with Procurement prior to the award of a contract governed by Public Contract Code section 10306.

(b) A protestant shall file a notice of protest of the proposed award of a contract governed by Public Contract Code section 12102, subdivision (h) with Procurement within the following time period:

(1) no earlier than the issuance of an intent to award a contract; and

(2) no later than five working days after the issuance of an intent to award a contract.

NOTE: Authority cited: Section 13920, Government Code. Reference: Sections 10306 and 12102(h), Public Contract Code.

HISTORY

1. New subarticle 3 (sections 872.1–872.13) and section filed 12–15–97 as interim regulations under Government Code section 11400.20; operative 12–15–97 (Register 97, No. 51).
2. Interim regulation transmitted to OAL 12–31–98 as a permanent rulemaking and filed 2–17–99; operative 2–17–99 pursuant to Government Code section 11400.20 (Register 99, No. 12).

§ 872.2. Submission of Protest to Board.

(a) Procurement shall submit a notice of protest to the board within three working days of its receipt of a protest filed under section 872.1.

(b) At the same time that Procurement submits a notice of protest to the board under subdivision (a), it shall submit a written bid protest summary to the board that shall contain all of the following information to the extent that the information is readily available in the solicitation file:

(1) a description of the product or service that is the subject of the protested solicitation;

(2) the name of the state agency on whose behalf the solicitation is being administered, or a statement that the solicitation is being administered on behalf of all the state agencies;

(3) the following information for each bidder that submitted a final bid:

(A) the name of the bidder;

(B) mailing address;

(C) voice telephone number;

(D) facsimile telephone number;

(E) name of contact person;

(F) job title of contact person;

(G) the total dollar amount of the bid, including any corrections or adjustments made by Procurement during the evaluation of the bid; and

(H) the total points allocated to the bid, if applicable.

(4) the name of the proposed awardee;

(5) the statutory authority governing the solicitation; and

(6) a statement of the basis for selection.

(c) Procurement shall provide a copy of the bid protest summary submitted to the board under subdivision (b) to all bidders that submitted a final bid.

(d) The Executive Officer may dismiss a protest for any of the following grounds:

(1) the notice of protest was untimely filed; or

(2) the board does not have jurisdiction over the protest.

(e) Prior to dismissing a protest under subsection (d), the protestant shall be:

(1) notified of the reason for dismissing the protest; and

(2) given three working days to submit written materials that refute the reason for the dismissal.

(f) The Executive Officer shall review written materials submitted under subsection (e)(2), and any other pertinent materials, and prepare a written decision that complies with section 619.1.

(g) A copy of the Executive Officer's decision shall be mailed or delivered to the protestant and Procurement.

(h) The procedure in subsections (d)–(f) is a hearing under section 617.6.

(i) A protestant may object to the use of the informal hearing process upon receipt of the notice under subsection (e)(1).

NOTE: Authority cited: Section 13920, Government Code. Reference: Sections 10306 and 12102(h), Public Contract Code.

HISTORY

1. New section filed 12–15–97 as interim regulations under Government Code section 11400.20; operative 12–15–97 (Register 97, No. 51).
2. Interim regulation transmitted to OAL 12–31–98 as a permanent rulemaking with amendments and filed 2–17–99; operative 2–17–99 pursuant to Government Code section 11400.20 (Register 99, No. 12).

§ 872.3. Maintenance of Procurement Records.

(a) Procurement shall maintain all documents used in the evaluation and selection process, including, but not limited to:

(1) scoring sheets;

(2) scoring summaries; and

(3) evaluation and selection report.

(b) The documents described in subsection (a) shall be maintained for ten working days after an intent to award a contract is issued, or until the board issues a final decision on a protest, whichever is longer.

NOTE: Authority cited: Section 13920, Government Code. Reference: Sections 10306 and 12102(h), Public Contract Code.

HISTORY

1. New section filed 12–15–97 as interim regulations under Government Code section 11400.20; operative 12–15–97 (Register 97, No. 51).
2. Interim regulation transmitted to OAL 12–31–98 as a permanent rulemaking and filed 2–17–99; operative 2–17–99 pursuant to Government Code section 11400.20 (Register 99, No. 12).

§ 872.4. Submission of Solicitation File to Board.

(a) Within three working days of Procurement's receipt of a protest under section 872.2, Procurement shall submit two copies of each of the following to the board:

(1) the solicitation document;

(2) the proposed awardee's final bid;

(3) the protestant's final bid; and

(4) any document prepared to record or justify the selection decision, including, but not limited to:

(A) a document used to indicate a proposed award to a bidder who is not the lowest bidder;

(B) the notice of intent to award a contract; and

(C) the evaluation and selection report.

NOTE: Authority cited: Section 13920, Government Code. Reference: Sections 10306 and 12102(h), Public Contract Code.

HISTORY

1. New section filed 12–15–97 as interim regulations under Government Code section 11400.20; operative 12–15–97 (Register 97, No. 51).
2. Interim regulation transmitted to OAL 12–31–98 as a permanent rulemaking and filed 2–17–99; operative 2–17–99 pursuant to Government Code section 11400.20 (Register 99, No. 12).

§ 872.5. Availability of Solicitation Documents to Parties.

(a) Procurement shall make available for inspection by a party the documents described in section 872.4 within three working days after receiving a written request from a party.

(b) A party shall make a request for documents under subsection (a) as soon as practicable and no later than five calendar days after receipt of the detailed statement of protest.

(c) Procurement shall permit a party to obtain a copy of any document described in section 872.4 by one of the following methods determined by Procurement in its discretion:

(1) permit a party to arrange for a private copy service to make a copy of the requested documents at a time and location convenient to Procurement; or

(2) make a copy of the requested documents after receiving advance payment from the party for the reasonable cost of photocopying.

NOTE: Authority cited: Section 13920, Government Code. Reference: Sections 10306 and 12102(h), Public Contract Code.

HISTORY

1. New section filed 12–15–97 as interim regulations under Government Code section 11400.20; operative 12–15–97 (Register 97, No. 51).
2. Interim regulation transmitted to OAL 12–31–98 as a permanent rulemaking and filed 2–17–99; operative 2–17–99 pursuant to Government Code section 11400.20 (Register 99, No. 12).

§ 872.6. Schedule for Submission of Written Documents.

(a) The Executive Officer or hearing officer may establish a schedule for the submission of:

(1) the detailed statement of protest;

(2) a written request to be a party;

(3) a response to the detailed statement of protest;

(4) a rebuttal to the responses to the detailed statement of protest; and

(5) any other written evidence or argument.

(c) The Executive Officer or hearing officer may require that the parties submit:

(1) a list of witnesses;

(2) a declaration from each witness the party intends to have testify that summarizes the testimony of the witness;

(3) a copy of each exhibit to be introduced into evidence other than items already submitted under section 872.4(a);

(4) a reasonable estimate of the time needed by each party to present its case;

(5) pre–hearing motions; and

(6) any information to assist the efficient administration of the hearing.

NOTE: Authority cited: Section 13920, Government Code. Reference: Sections 10306 and 12102(h), Public Contract Code.

HISTORY

1. New section filed 12–15–97 as interim regulations under Government Code section 11400.20; operative 12–15–97 (Register 97, No. 51).
2. Interim regulation transmitted to OAL 12–31–98 as a permanent rulemaking and filed 2–17–99; operative 2–17–99 pursuant to Government Code section 11400.20 (Register 99, No. 12).

§ 872.7. Detailed Statement of Protest.

(a) A protestant shall submit a written detailed statement of protest to the board within 10 calendar days after filing a notice of protest under section 872.1.

(b) If a protestant fails to submit a timely detailed statement of protest, a notice of protest shall be deemed withdrawn.

(1) If a protestant fails to submit a timely detailed statement of protest, the board shall inform all parties in writing that the protest is withdrawn and take no further action on the protest.

(c) A detailed statement of protest shall include a full and complete statement of the relevant law and facts supporting that:

(1) the protestant is the lowest responsible bidder meeting specifications, for a protest under Public Contract Code section 10306; or

(2) the protestant's bid should have been selected in accordance with the selection criteria in the solicitation document, for a protest under Public Contract Code section 12102(h).

NOTE: Authority cited: Section 13920, Government Code. Reference: Sections 10306 and 12102(h), Public Contract Code.

HISTORY

1. New section filed 12–15–97 as interim regulations under Government Code section 11400.20; operative 12–15–97 (Register 97, No. 51).
2. Interim regulation transmitted to OAL 12–31–98 as a permanent rulemaking with amendments and filed 2–17–99; operative 2–17–99 pursuant to Government Code section 11400.20 (Register 99, No. 12).

§ 872.8. Response to Detailed Statement of Protest.

A party may submit a response to the detailed statement of protest within the time frame determined by the Executive Officer under section 872.6.

NOTE: Authority cited: Section 13920, Government Code. Reference: Sections 10306 and 12102(h), Public Contract Code.

HISTORY

1. New section filed 12–15–97 as interim regulations under Government Code section 11400.20; operative 12–15–97 (Register 97, No. 51).
2. Interim regulation transmitted to OAL 12–31–98 as a permanent rulemaking and filed 2–17–99; operative 2–17–99 pursuant to Government Code section 11400.20 (Register 99, No. 12).

§ 872.9. Request for Extension of Time for Submitting Documents or Continuance.

(a) A party may request a continuance of a hearing or an extension of time for the submission of a document, except for the submission of a detailed statement of protest.

(b) A request under subdivision (a) must be in writing and submitted to the Executive Officer as soon as the need for the request is known to the party, but no later than five working days prior to the date of the hearing or deadline for the submission of documents.

(1) If a party is first aware of the need for a continuance request on the day scheduled for hearing, the request may be made to the hearing officer.

(2) A request under subdivision (a) made less than five working days prior to the date of the hearing or deadline for the submission of documents shall not be granted unless:

(A) it was impossible for the party to make the request any sooner; and

(B) the party made the request as soon as becoming aware of the need for it.

(c) Prior to making a request under subdivision (a), a party must contact all other parties and:

(1) inform the parties of the need for the request;

(2) determine whether or not each party will agree to the request; and

(3) if the request is for a continuance of a hearing, determine alternative dates available to all parties.

(d) A request under subdivision (a) must include a declaration that includes:

(1) the specific facts showing good cause for the request;

(2) available documentation of the specific facts showing good cause for the request;

(3) the date when the facts supporting the request became known to the party; and

(4) a statement that all parties were contacted as required by subdivision (c) and a summary of the outcome.

(e) A request under subdivision (a) shall be granted only if good cause exists.

(f) Good cause for a request under subdivision (a) exists for any of the following:

(1) unavailability due to the death or incapacitating illness of a party, a representative, or a member of the immediate family of a party or representative, when it is not possible to substitute another individual because of the proximity of the hearing date or deadline for submission of documents;

(2) failure to receive a copy of the detailed statement of protest;

(3) failure to receive a copy of a response to a detailed statement of protest;

(4) failure to make documents available to a party under section 872.5 after a timely request;

(5) failure to receive timely notice of the hearing date as required by section 872.11; or

(6) agreement by all parties to the continuance or extension.

NOTE: Authority cited: Section 13920, Government Code. Reference: Sections 10306 and 12102(h), Public Contract Code.

HISTORY

1. New section filed 12–15–97 as interim regulations under Government Code section 11400.20; operative 12–15–97 (Register 97, No. 51).
2. Interim regulation transmitted to OAL 12–31–98 as a permanent rulemaking and filed 2–17–99; operative 2–17–99 pursuant to Government Code section 11400.20 (Register 99, No. 12).

§ 872.10. Dismissal for Failure to State a Basis to Uphold Protest.

(a) After reviewing the detailed statement of protest and responses of the parties, the Executive Officer shall:

(1) schedule the protest for further hearing under section 872.11; or

(2) recommend that the board dismiss the protest.

(b) The board may dismiss a protest for any of the following reasons:

(1) the detailed statement of protest fails to comply with section 872.7(b);

(2) the board does not have jurisdiction over the protest;

(3) the detailed statement of protest fails to state a basis upon which the protest may be upheld; or

(4) the protest is entirely without merit.

(c) If the Executive Officer recommends that the protest be dismissed under subsection (a)(2), the Executive Officer shall do all of the following:

(1) schedule the dismissal recommendation for action by the board;

(2) submit a written recommendation explaining the reasons for dismissing the protest without further hearing;

(3) notify all interested parties in writing that the dismissal recommendation has been scheduled for action by the board; and

(4) send a copy of the written recommendation required by subsection (c)(2) to the parties.

(d) The board's consideration of and action on the Executive Officer's recommendation to dismiss a protest is a hearing limited to written materials under section 617.6.

(1) A protestant may object to the use of the informal hearing process upon receipt of the notice of recommendation of dismissal under subsection (c)(3).

NOTE: Authority cited: Section 13920, Government Code. Reference: Sections 10306 and 12102(h), Public Contract Code.

HISTORY

1. New section filed 12–15–97 as interim regulations under Government Code section 11400.20; operative 12–15–97 (Register 97, No. 51).
2. Interim regulation transmitted to OAL 12–31–98 as a permanent rulemaking with amendments and filed 2–17–99; operative 2–17–99 pursuant to Government Code section 11400.20 (Register 99, No. 12).

§ 872.11. Assignment and Scheduling for Hearing.

(a) The Executive Officer shall assign a protest that is not dismissed under section 872.10 to a hearing officer.

(b) The Executive Officer shall schedule the protest for hearing and send written notice to the parties.

NOTE: Authority cited: Section 13920, Government Code. Reference: Sections 10306 and 12102(h), Public Contract Code.

HISTORY

1. New section filed 12–15–97 as interim regulations under Government Code section 11400.20; operative 12–15–97 (Register 97, No. 51).
2. Interim regulation transmitted to OAL 12–31–98 as a permanent rulemaking and filed 2–17–99; operative 2–17–99 pursuant to Government Code section 11400.20 (Register 99, No. 12).

§ 872.12. Pre–Hearing Conference.

(a) The hearing officer or Executive Officer may conduct a prehearing conference.

(b) The parties shall receive reasonable written notice of the time and location of a prehearing conference.

(c) A prehearing conference may address any of the following:

(1) clarification of issues;

(2) identity of witnesses;

(3) exchange of witness lists;

(4) limitation of the number of witnesses;

(5) limitation on the scope of a witness' testimony;

(6) limitation of time allocated to a party's presentation of evidence;

(7) limitation of time allocated to a party's cross–examination of witnesses;

(8) exchange of exhibits;

(9) objections to evidence;

(10) order of presentation of evidence;

(11) order of cross–examination of witnesses;

(12) protective orders;

(13) stipulations;

(14) dismissal for any of the grounds included in section 872.10(b);

(15) pre–hearing motions; and

(16) any other matters that will promote the orderly and efficient conduct of the hearing.

(d) The hearing officer or Executive Officer may require the submission of prehearing statements concerning matters to be discussed at the prehearing conference.

(e) The hearing officer may issue a prehearing order incorporating the matters determined at the prehearing conference.

(1) The hearing officer may direct one of the parties to prepare a prehearing order.

(f) If the hearing officer decides to dismiss a protest under subsection (c), the hearing officer shall prepare a proposed decision for the board under section 619.3.

(g) A prehearing conference may be conducted by electronic means.

NOTE: Authority cited: Section 13920, Government Code. Reference: Sections 10306 and 12102(h), Public Contract Code.

HISTORY

1. New section filed 12–15–97 as interim regulations under Government Code section 11400.20; operative 12–15–97 (Register 97, No. 51).
2. Interim regulation transmitted to OAL 12–31–98 as a permanent rulemaking with amendments and filed 2–17–99; operative 2–17–99 pursuant to Government Code section 11400.20 (Register 99, No. 12).

§ 872.13. Representation of Parties.

(a) A party that chooses to be represented shall notify the board in writing with the following information concerning the representative:

(1) name;

(2) address;

(3) telephone number, including area code; and

(4) facsimile number, including area code.

(b) Once notified that a party has a representative, the board shall send all notices to the representative until the party informs the board that the person is no longer representing the party.

(c) Only one representative for a party may actively participate in a hearing.

(1) Active participation of a representative includes:

(A) conducting the direct examination of a witness;

(B) conducting the cross–examination of a witness;

(C) objecting to evidence;

(D) responding to objections;

(E) making offers of proof; and

(F) arguing issues of fact or law pertaining to subsection (c)(1)(A)–(E).

(2) No more than one representative for each party may:

(A) for each of the party's own witnesses:

1. examine the witness;

2. respond to objections raised during the examination; and

3. make and argue objections during the cross–examination of the witness.

(B) for each of the other parties' witnesses:

1. make and argue objections during the examination of the witness.

2. cross–examine the witness; and

3. respond to objections raised during the cross–examination;

(C) make an opening statement; or

(D) make a closing argument.

NOTE: Authority cited: Section 13920, Government Code. Reference: Sections 10306 and 12102(h), Public Contract Code.

HISTORY

1. New section filed 12–15–97 as interim regulations under Government Code section 11400.20; operative 12–15–97 (Register 97, No. 51).
2. Interim regulation transmitted to OAL 12–31–98 as a permanent rulemaking with amendments and filed 2–17–99; operative 2–17–99 pursuant to Government Code section 11400.20 (Register 99, No. 12).

§ 873. Nature of Hearings.

HISTORY

1. Amendment filed 5–19–61; effective thirtieth day thereafter (Register 61, No. 10).
2. Repealer filed 12–15–97 as interim regulations under Government Code section 11400.20; operative 12–15–97 (Register 97, No. 51).

Subarticle 4. Hearing Procedure

§ 873.1. Hearing by Electronic Means.

The party that requested that all or part of a hearing be conducted by electronic means under section 617.4 shall be responsible for providing, operating, and paying for all necessary equipment.

NOTE: Authority cited: Section 13920, Government Code. Reference: Sections 10306 and 12102(h), Public Contract Code.

HISTORY

1. New subarticle 4 (sections 873.1–873.13) and section filed 12–15–97 as interim regulations under Government Code section 11400.20; operative 12–15–97 (Register 97, No. 51).
2. Interim regulation transmitted to OAL 12–31–98 as a permanent rulemaking and filed 2–17–99; operative 2–17–99 pursuant to Government Code section 11400.20 (Register 99, No. 12).

§ 873.2. Record of Hearing.

(a) Each hearing shall be reported by a certified court reporter provided by the Board or recorded by electronic means.

(b) Any party may request the board to arrange for the preparation of a hearing transcript.

(1) The party requesting the preparation of a hearing transcript shall bear all costs for its preparation.

(2) One copy of the transcript shall be provided to the board at no cost to the board.

NOTE: Authority cited: Section 13920, Government Code. Reference: Sections 10306 and 12102(h), Public Contract Code.

HISTORY

1. New section filed 12–15–97 as interim regulations under Government Code section 11400.20; operative 12–15–97 (Register 97, No. 51).
2. Interim regulation transmitted to OAL 12–31–98 as a permanent rulemaking and filed 2–17–99; operative 2–17–99 pursuant to Government Code section 11400.20 (Register 99, No. 12).

§ 873.3. Conduct of Hearing.

(a) The hearing officer or Executive Officer shall determine whether the hearing shall:

(1) permit the presentation of oral evidence under sections 617.7 and 873.5; or

(2) be limited to the submission of written materials under sections 617.6 and 873.4.

(b) The determination made under subsection (a) shall be based on the following factors:

(1) complexity of legal or factual issues;

(2) necessity to evaluate credibility of witnesses for a proper determination of issues;

(3) parties' representation by legal counsel;

(4) necessity of witnesses being subject to cross examination for the proper determination of issues; and

(5) any other factor likely to affect a just and proper determination of issues.

(c) The parties shall be informed of whether the hearing will be conducted under subsection (a)(1) or (a)(2).

(d) The hearing officer may allow or request the parties to submit a post–hearing brief.

(1) A post–hearing brief shall be limited to legal and factual arguments related to relevant issues under section 873.7 or identified by the hearing officer.

(2) The hearing officer shall inform the parties of the deadline for the submission of a post–hearing brief.

NOTE: Authority cited: Section 13920, Government Code. Reference: Sections 10306 and 12102(h), Public Contract Code.

HISTORY

1. New section filed 12–15–97 as interim regulations under Government Code section 11400.20; operative 12–15–97 (Register 97, No. 51).
2. Interim regulation transmitted to OAL 12–31–98 as a permanent rulemaking with amendments and filed 2–17–99; operative 2–17–99 pursuant to Government Code section 11400.20 (Register 99, No. 12).

§ 873.4. Protest Limited to Written Materials.

(a) An assertion made in the detailed statement of protest that is supported by facts alleged in the detailed statement of protest shall be presumed to be true unless rebutted by a party in the party's response to the detailed statement of protest.

(b) An assertion made in a party's response to the detailed statement of protest that is supported by facts alleged in the response shall be presumed to be true unless rebutted by the protestant in its submission under section 872.6.

NOTE: Authority cited: Section 13920, Government Code. Reference: Sections 10306 and 12102(h), Public Contract Code.

HISTORY

1. New section filed 12–15–97 as interim regulations under Government Code section 11400.20; operative 12–15–97 (Register 97, No. 51).
2. Interim regulation transmitted to OAL 12–31–98 as a permanent rulemaking and filed 2–17–99; operative 2–17–99 pursuant to Government Code section 11400.20 (Register 99, No. 12).

§ 873.5. Presentation of Oral Evidence.

Each party has the right to cross examine witnesses called to testify by another party.

NOTE: Authority cited: Section 13920, Government Code. Reference: Sections 10306 and 12102(h), Public Contract Code.

HISTORY

1. New section filed 12–15–97 as interim regulations under Government Code section 11400.20; operative 12–15–97 (Register 97, No. 51).
2. Interim regulation transmitted to OAL 12–31–98 as a permanent rulemaking and filed 2–17–99; operative 2–17–99 pursuant to Government Code section 11400.20 (Register 99, No. 12).

§ 873.6. Evidence.

(a) All relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs.

(1) This does not limit the discretion of the hearing officer under section 617.2(b).

(b) Evidence that qualifies under subdivision (a) may be admitted even though there is a common law or statutory rule which might make its admission improper over objection in a civil action.

(c) Objections to and arguments about evidence may be considered when determining the weight to be given to the evidence.

NOTE: Authority cited: Section 13920, Government Code. Reference: Sections 10306 and 12102(h), Public Contract Code.

HISTORY

1. New section filed 12–15–97 as interim regulations under Government Code section 11400.20; operative 12–15–97 (Register 97, No. 51).
2. Interim regulation transmitted to OAL 12–31–98 as a permanent rulemaking and filed 2–17–99; operative 2–17–99 pursuant to Government Code section 11400.20 (Register 99, No. 12).

§ 873.7. Scope of Hearing.

(a) In a protest under Public Contract Code section 10306, the protestant must prove that it is the lowest responsible bidder meeting specifications in order for the protest to be granted.

(b) In a protest under Public Contract Code section 12102(h), the protestant must prove that its bid should have been selected in accordance with the selection criteria in the solicitation document.

(c) Evidence shall be limited to issues that are:

(1) relevant to subdivision (a) or (b), whichever is applicable; and

(2) identified in the protestant's detailed statement of protest; or in a party's response to the detailed statement of protest.

(d) The protest may be denied without determining any other issues raised under subdivision (c) if:

(1) Procurement alleged that the protestant was not responsive to the requirements of the solicitation document in its response to the detailed statement of protest; and

(2) the protestant failed to prove that its bid was responsive to the requirements of the solicitation document.

NOTE: Authority cited: Section 13920, Government Code. Reference: Sections 10306 and 12102(h), Public Contract Code.

HISTORY

1. New section filed 12–15–97 as interim regulations under Government Code section 11400.20; operative 12–15–97 (Register 97, No. 51).
2. Interim regulation transmitted to OAL 12–31–98 as a permanent rulemaking and filed 2–17–99; operative 2–17–99 pursuant to Government Code section 11400.20 (Register 99, No. 12).

§ 873.8. Burden of Proof.

(a) The protestant shall have the burden of proof.

(b) The standard of proof is a preponderance of the evidence.

NOTE: Authority cited: Section 13920, Government Code. Reference: Sections 10306 and 12102(h), Public Contract Code.

HISTORY

1. New section filed 12–15–97 as interim regulations under Government Code section 11400.20; operative 12–15–97 (Register 97, No. 51).
2. Interim regulation transmitted to OAL 12–31–98 as a permanent rulemaking and filed 2–17–99; operative 2–17–99 pursuant to Government Code section 11400.20 (Register 99, No. 12).

§ 873.9. Order of Presentation of Evidence.

(a) In a hearing permitting the presentation of oral evidence under section 873.3(a)(1), the parties shall present evidence in the following order, except as provided in subsection (b):

(1) the protestant;

(2) Procurement;

(3) proposed awardee; and

(4) other parties in an order determined by the hearing officer.

(b) In a hearing permitting the presentation of oral evidence under section 873.3(a)(1) that concerns a solicitation in which Procurement intends to award a contract pursuant to article 3 (commencing with section 10300), chapter 2, part 2, division 2, Public Contract Code to other than the lowest bidder, the parties shall present evidence in the following order:

(1) Procurement;

(2) the protestant;

(3) proposed awardee; and

(4) other parties in an order determined by the hearing officer.

(c) The hearing officer may require the parties to present evidence in any order that furthers the efficiency of the hearing.

NOTE: Authority cited: Section 13920, Government Code. Reference: Sections 10306 and 12102(h), Public Contract Code.

HISTORY

1. New section filed 12–15–97 as interim regulations under Government Code section 11400.20; operative 12–15–97 (Register 97, No. 51).
2. Interim regulation transmitted to OAL 12–31–98 as a permanent rulemaking and filed 2–17–99; operative 2–17–99 pursuant to Government Code section 11400.20 (Register 99, No. 12).

§ 873.10. Closure of Hearing Record.

(a) In a hearing in which post–hearing briefs were not allowed or permitted, the hearing record shall be closed upon the conclusion of testimony and presentation of any oral argument by the parties, unless otherwise ordered.

(b) In a hearing in which post–hearing briefs were allowed or permitted, the hearing record shall close at the deadline for the submission of post–hearing briefs, unless the hearing officer or Executive Officer orders otherwise or grants an extension under section 872.9.

(c) No evidence or argument shall be submitted to the board after the close of the hearing record.

(1) The hearing officer of Executive Officer may grant a timely written request to reopen the hearing record for good cause.

(A) A written request is timely if it is filed with the board within 24 hours of the closing of the hearing record.

NOTE: Authority cited: Section 13920, Government Code. Reference: Sections 10306 and 12102(h), Public Contract Code.

HISTORY

1. New section filed 12–15–97 as interim regulations under Government Code section 11400.20; operative 12–15–97 (Register 97, No. 51).
2. Interim regulation transmitted to OAL 12–31–98 as a permanent rulemaking and filed 2–17–99; operative 2–17–99 pursuant to Government Code section 11400.20 (Register 99, No. 12).

§ 873.11. Failure to Appear or Proceed.

(a) The failure of a protestant to appear at a hearing, or to proceed with a hearing shall constitute a withdrawal of the protest, unless an extension of time for submission of documents or a continuance of the hearing has been granted.

(b) The failure of Procurement to appear at a hearing, or to proceed with a hearing shall constitute a withdrawal of its opposition to the protest, unless an extension of time for submission of documents or a continuance of the hearing has been granted.

(c) The failure of the proposed awardee to appear at a hearing, or to proceed with a hearing shall constitute a withdrawal of its opposition to the protest, unless an extension of time for submission of documents or a continuance of the hearing has been granted.

(d) The failure of any other party to appear at a hearing, or to proceed with a hearing shall constitute a withdrawal of the party's request to participate as a party in the protest, unless an extension of time for submission of documents or a continuance of the hearing has been granted.

NOTE: Authority cited: Section 13920, Government Code. Reference: Sections 10306 and 12102(h), Public Contract Code.

HISTORY

1. New section filed 12–15–97 as interim regulations under Government Code section 11400.20; operative 12–15–97 (Register 97, No. 51).
2. Interim regulation transmitted to OAL 12–31–98 as a permanent rulemaking and filed 2–17–99; operative 2–17–99 pursuant to Government Code section 11400.20 (Register 99, No. 12).

§ 873.12. Withdrawal of Protest.

(a) A protestant may withdraw its protest at any time prior to the board's adoption of a decision in the matter under section 619.5.

(b) The protestant shall notify the board in writing of the withdrawal of the protest.

NOTE: Authority cited: Section 13920, Government Code. Reference: Sections 10306 and 12102(h), Public Contract Code.

HISTORY

1. New section filed 12–15–97 as interim regulations under Government Code section 11400.20; operative 12–15–97 (Register 97, No. 51).
2. Interim regulation transmitted to OAL 12–31–98 as a permanent rulemaking and filed 2–17–99; operative 2–17–99 pursuant to Government Code section 11400.20 (Register 99, No. 12).

§ 873.13. Withdrawal of Opposition to Protest.

(a) Procurement or the proposed awardee may withdraw its opposition to the protest at any time prior to the board's adoption of a decision in the matter under section 619.5.

(b) If Procurement withdraws its opposition to the protest under subsection (a), the protest shall be upheld without further hearing.

(c) If the proposed awardee withdraws its opposition to the protest under subsection (a), it shall not participate any further in the hearing.

NOTE: Authority cited: Section 13920, Government Code. Reference: Sections 10306 and 12102(h), Public Contract Code.

HISTORY

1. New section filed 12–15–97 as interim regulations under Government Code section 11400.20; operative 12–15–97 (Register 97, No. 51).
2. Interim regulation transmitted to OAL 12–31–98 as a permanent rulemaking and filed 2–17–99; operative 2–17–99 pursuant to Government Code section 11400.20 (Register 99, No. 12).

§ 874. Conduct of Hearings.

HISTORY

1. Repealer filed 12–15–97 as interim regulations under Government Code section 11400.20; operative 12–15–97 (Register 97, No. 51).

Subarticle 5. Prohibited Conduct

§ 874.1. Contempt.

In addition to the grounds provided in section 618.3, a party is subject to a contempt sanction for an intentional failure or refusal, without substantial justification, to comply with a timely request under section 872.5.

NOTE: Authority cited: Section 13920, Government Code. Reference: Sections 10306 and 12102(h), Public Contract Code.

HISTORY

1. New subarticle 5 (section 874.1) and section filed 12–15–97 as interim regulations under Government Code section 11400.20; operative 12–15–97 (Register 97, No. 51).
2. Interim regulation transmitted to OAL 12–31–98 as a permanent rulemaking and filed 2–17–99; operative 2–17–99 pursuant to Government Code section 11400.20 (Register 99, No. 12).

§ 875. Record of Hearing.

HISTORY

1. New section filed 8–5–70; effective thirtieth day thereafter (Register 70, No. 32).
2. Repealer filed 12–15–97 as interim regulations under Government Code section 11400.20; operative 12–15–97 (Register 97, No. 51).

§ 876. Decisions.

HISTORY

1. Renumbering from former Section 875 filed 8–5–70; effective thirtieth day thereafter (Register 70, No. 32).
2. Repealer filed 12–15–97 as interim regulations under Government Code section 11400.20; operative 12–15–97 (Register 97, No. 51).

§ 877. Form of Notice.

HISTORY

1. Renumbering from former Section 876 filed 8–5–70; effective thirtieth day thereafter (Register 70, No. 32).
2. Repealer filed 12–15–97 as interim regulations under Government Code section 11400.20; operative 12–15–97 (Register 97, No. 51).

Article 18. Relocation Assistance in Connection with the Acquisition of Real Property by State Agencies

HISTORY

1. New Article 18 (Sections 880 through 884) filed 9–22–65 as an emergency; effective upon filing. Certificate of Compliance included (Register 65, No. 18).
2. Repealer of Sections 880 through 884 and new Sections 880 through 883 filed 4–7–71 as an emergency; effective upon filing (Register 71, No. 15).
3. Certificate of Compliance—Section 11422.1, Gov. Code, filed 7–21–71 (Register 71, No. 30).
4. Repealer of Article 18 (Sections 880 through 883) and new Article 18 (Sections 880 through 887.4) filed 6–15–72 as an emergency; designated effective 7–1–72. Certificate of Compliance included (Register 72, No. 25).
5. Repealer of Article 18 (Sections 880 through 887.4) filed 5–24–74; effective thirtieth day thereafter (Register 74, No. 21).

Article 19. Overpayments

§ 890. Overpayments.

Upon authorization of the State Board of Control, a state agency may retain overpayments of the nature and amount specified in Section 16302.1 of the Government Code in accordance with the specific conditions of that section. State agencies desiring to secure such authorization shall file an application therefor with the State Board of Control, accompanied by a statement of the circumstances.

NOTE: Authority cited: Section 13920, Government Code. Reference: Section 16302.1, Government Code.

HISTORY

1. New Article 19 (Section 890) filed 1–13–69; designated effective 3–1–69 (Register 69, No. 4).

Article 20. Miscellaneous Reimbursements

§ 895. Stolen Personal Property.

NOTE: Authority cited: Section 19258.5, Gov. Code. Reference: Section 19258.5, Gov. Code.

HISTORY

1. New Article 20 (Section 895) filed 3–10–72; effective thirtieth day thereafter (Register 72, No. 11).
2. Amendment filed 6–8–79 as an emergency; designated effective 7–1–79 (Register 79, No. 23). Certificate of Compliance included.
3. Change without regulatory effect repealing section (Register 87, No. 44).

§ 897. Clothing Allowances.

NOTE: Reference: Sections 19460, *et seq.*, Government Code.

HISTORY

1. New Sections 897–897.7 filed 11–1–72 as an emergency; designated effective 12–1–72 (Register 72, No. 45).
2. Certificate of Compliance filed 1–3–73 (Register 73, No. 1).
3. Change without regulatory effect repealing section (Register 87, No. 44).

§ 897.1. Definitions.

HISTORY

1. Amendment filed 2–5–75 as an emergency; effective upon filing (Register 75, No. 6).
2. Certificate of Compliance filed 6–4–75 (Register 75, No. 23).
3. Change without regulatory effect repealing section (Register 87, No. 44).

§ 897.2. Requirements.

HISTORY

1. Amendment of subsection (c) filed 9–14–73; effective thirtieth day thereafter (Register 73, No. 37).
2. Repealer of subsection (c) and renumbering of subsection (d) to (c) filed 2–5–75 as an emergency; effective upon filing (Register 75, No. 6).
3. Certificate of Compliance filed 6–4–75 (Register 75, No. 23).
4. Amendment of subsection (b) filed 8–16–78; designated effective 10–10–78 (Register 78, No. 33).
5. Change without regulatory effect repealing section (Register 87, No. 44).

§ 897.3. Annual Review of Requirements.

HISTORY

1. Change without regulatory effect repealing section (Register 87, No. 44).

§ 897.4. Employee Eligibility.

NOTE: Authority cited: Section 13920, Government Code. Reference: Section 19462, Government Code.

HISTORY

1. Amendment filed 2–5–75 as an emergency; effective upon filing (Register 75, No. 6).
2. Certificate of Compliance filed 6–4–75 (Register 75, No. 23).
3. Change without regulatory effect repealing section (Register 87, No. 44).

§ 897.5. Payment of Uniform.

HISTORY

1. Repealer filed 2–5–75 as an emergency; effective upon filing (Register 75, No. 6).
2. Certificate of Compliance filed 6–4–75 (Register 75, No. 23).

§ 897.6. Payment Date and Procedures.

NOTE: Authority cited: Section 13920, Government Code. Reference: Section 19462, Government Code.

HISTORY

1. Amendment filed 2–5–75 as an emergency; effective upon filing (Register 75, No. 6).
2. Certificate of Compliance filed 6–4–75 (Register 75, No. 23).
3. Amendment filed 8–16–78; designated effective 10–10–78 (Register 78, No. 33).
4. Change without regulatory effect repealing section (Register 87, No. 44).

§ 897.7. Annual Uniform Replacement Allowances.

NOTE: Authority cited: Section 13920, Government Code. Reference: Section 19463, Government Code.

HISTORY

1. Amendment filed 8–16–78; designated effective 10–10–78 (Register 78, No. 33). For prior history, see Register 77, No. 48.
2. Amendment filed 10–4–79 as an emergency; designated effective 10–10–79. Certificate of Compliance included (Register 79, No. 40).
3. Amendment filed 10–26–79; effective thirtieth day thereafter (Register 79, No.43).
4. New subsection (e)(2) filed 2–28–80; designated effective 4–1–80 (Register 80, No. 9).
5. Amendment filed 12–8–80; effective thirtieth day thereafter (Register 80, No. 50).
6. Editorial reprinting of text deleted in error in Register 84, Nos. 8 and 12 (Register 84, No. 15).
7. Change without regulatory effect repealing section (Register 87, No. 44).

§ 897.8. Part–Time Uniform Allowance.

NOTE: Authority cited: Sections 13920 and 19463, Government Code. Reference: Section 11030, Government Code.

HISTORY

1. Amendment filed 11–22–77; designated effective 1–1–78 (Register 77, No. 48). For prior history, see Register 77, No. 9.
2. Amendment filed 12–27–77 as an emergency; effective upon filing. Certificate of Compliance included (Register 77, No. 53).
3. Editorial reprinting of text deleted in error in Register 84, Nos. 8 and 12 (Register 84, No. 15).
4. Change without regulatory effect repealing section (Register 87, No. 44).

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Barclays Official

CALIFORNIA CODE OF REGULATIONS

Title 2. Administration

Division 2. Financial Operations

Chapter 2. State Controller

Vol. 2

THOMSON
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BARCLAYS OFFICIAL CALIFORNIA CODE OF REGULATIONS
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Chapter 2. State Controller

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Chapter 2. State Controller

Subchapter 1. Accounting Procedures for Counties

Article 1. General

§ 901. Purpose.

To prescribe a uniform system of accounting procedures for California counties.

NOTE: Authority cited: Section 30200, Government Code.

HISTORY

1. New Article 1 (Secs. 901 through 904) filed 4–1–64; effective thirtieth day thereafter (Register 64, No. 7).

§ 902. Scope.

The mandatory accounting requirements, funds and account classifications are prescribed by this Chapter.

§ 903. Accounting Principles.

(a) Accounting Method. The accounting method with a general ledger employing a self–balancing group of accounts is prescribed.

(b) Accounting Basis. The accrual of expenditures is required. The accrual of revenues is optional.

§ 904. Manual.

The State Controller shall provide each county with a manual of accounting standards and procedures. The manual shall include all the requirements of this Subchapter. Supplemental definitions and posting examples may be included for increased clarity. It shall contain any other explanations and procedural suggestions which may benefit a user. The manual shall be kept current for changes in law, policy and procedures.

§ 905. Funds Not Subject to Prescribed Accounts.

Balance sheet, revenue and expenditure accounts prescribed in this Subchapter do not apply to trust and agency, revolving, intragovernmental service and enterprise funds. Enterprise funds shall use the applicable accounting system from among those prescribed by the State Controller in Subchapter 3, "Accounting Procedures for Special Districts." Trust and agency, revolving and intragovernmental service funds may use whatever accounts are best suited to their specialized purposes.

NOTE: Authority cited: Sections 30200 and 53891, Government Code.

HISTORY

1. New section filed 5–21–69; effective thirtieth day thereafter (Register 69, No. 21).
2. Amendment filed 2–3–72; effective thirtieth day thereafter (Register 72, no. 6).

Article 2. Definitions

§ 910. Fund.

A sum of money or other resources segregated for the purpose of carrying on specific activities or attaining certain objectives in accordance with special regulations, restrictions, or limitations and consisting of an independent fiscal and accounting entity. (National Committee on Governmental Accounting).

NOTE: Authority cited for Subchapter 1: Sections 30200, Government Code.

HISTORY

1. New subchapter (Sections 910–916, 920–924, 934–936 and 946–949) filed 7–13–60; designated effective 7–1–61 (Register 60, No. 16).

§ 911. Revenues.

Amounts received (cash basis), or amounts received and receivable (accrual basis), which increase the governmental unit's equity. (See Account Adjustment Policy for exceptions.)

§ 912. Expenditures.

Amounts paid (cash basis), or amounts paid and payable (accrual basis) which decrease the governmental unit's equity. (See Account Adjustment Policy for exceptions.)

§ 913. Expenses.

Expenditures which benefit only the current fiscal period.

§ 914. Modified Accrual Basis.

The basis of accounting under which certain revenues are recognized when earned or when levies are made, and expenditures are recognized as soon as they result in liabilities for benefits received.

§ 915. Budgetary Accounts.

Those accounts necessary to reflect budget operations and condition, such as estimated revenues, appropriations, and encumbrances, as distinguished from proprietary accounts. (National Committee on Governmental Accounting.)

§ 916. Proprietary Accounts.

Those accounts which show actual financial condition and operations such as actual assets, liabilities, reserves, surplus, revenues, and expenditures, as distinguished from budgetary accounts. (National Committee on Governmental Accounting.)

Article 3. Funds

§ 920. Minimum Number.

A minimum number of funds, including but not limited to the applicable funds prescribed in this article, which in the judgment of each county provide for efficient management and compliance with legal requirements, shall be used.

§ 921. Funds.

The following funds shall be used in all counties, whenever applicable:

(a) General Fund. The fund that is available for any authorized purpose and which is, therefore, used to account for all revenues and all expenditures not provided for in other funds.

(b) Special Revenue Funds. To account for the proceeds of specific revenue sources (other than special assessments, expendable trusts, or for major capital projects) that are legally restricted to expenditures for specified purposes.

The following special revenue funds shall be used in all counties, wherever applicable.

(1) Fish and Game Fund. The fund used to account for fines and forfeitures received under Section 13003 of the Fish and Game Code and their expenditure for the propagation and conservation of fish and game.

(2) Special Aviation Fund. The fund used to account for aviation fuel taxes apportioned to the county under Section 21683 of the Public Utilities Code and their expenditure for authorized aviation purposes.

(3) Tax Reduction Fund. The fund to account for all new revenues, other than property taxes, made available by the legislature for use by boards of supervisors, as authorized under Section 29520 of the Government Code.

(4) Road Fund. The fund used to account for state and local tax apportionments and other authorized revenues, the expenditure of which is restricted to street, road, highway and bridge purposes.

(5) County Library Fund. The fund used to account for taxes and other revenues restricted to the operation of county free libraries.

(6) County Fire Fund. The fund used to account for taxes and other revenues restricted for fire prevention.

(7) Special Road Nos. 1, 2, 3, 4 and 5. The fund used to account for taxes and other revenues restricted for use within the unincorporated area for the construction and maintenance of the county road system.

(c) Capital Projects Fund. To account for financial resources to be used for the acquisition or construction of major capital facilities (other than those financed by Enterprise, Internal Service, Special Assessments or Trust Funds.)

(d) Debt Service Funds. To account for the accumulation of resources for, and the payment of, general long-term debt principle and interest.

(e) Special Assessment Fund. To account for the financing of public improvements or services deemed to benefit the properties against which special assessments are levied.

(f) Enterprise Fund. One or more funds used to account for services furnished to the general public and which are financed primarily by charges for such services. These funds are considered as separate from the regular county operations and their accounting methods are geared toward profit or loss determination.

Activities eligible for enterprise fund accounting are:

(1) Airports
(2) Harbors
(3) Transit systems
(4) Waste disposal systems
(5) Parking lots
(6) Hospitals which have been formally declared general hospitals by the board of supervisors
(7) Golf courses
(8) Stadia
(9) Marinas
(10) Tennis centers
(11) Other similar recreational facilities
(12) Occupational health services

(g) Internal Service Funds. To account for services furnished to other county departments and which are financed primarily by charges for such services. Because they are divorced from the regular county operation, commercial accounting techniques may be used.

(h) Trust and Agency Fund. To account for assets held by a county in a trustee capacity or as an agent for individuals, private organizations, other governmental agencies, and/or other funds. Included are Expendable Trust Funds, Nonexpendable Trust Funds, Pension Trust Funds and Agency Funds.

Funds belonging to a special district which are required by law to be kept in the county treasury would be accounted for in a Trust and Agency Fund. County service area funds are classified as special district funds.

Funds belonging to a school district, including those funds which serve all school districts, which are required by law to be kept in the county treasury would be accounted for in a Trust and Agency Fund.

NOTE: Authority and reference cited: Section 30200, Government Code.

HISTORY

1. Repealer and new section filed 6-6-80; effective thirtieth day thereafter (Register 80, No. 23). For prior history, see Register 61, No. 15.

§ 922. Operating Funds—Less Than Countywide.

NOTE: Authority and reference cited: Section 30200, Government Code.

HISTORY

1. Amendment filed 7-26-61; designated effective 9-1-61 (Register 61, No. 15).
2. Repealer filed 6-6-80; effective thirtieth day thereafter (Register 80, No. 23).(p. 70D1)

§ 923. Special Revenue Funds.

NOTE: Authority and reference cited: Section 30200, Government Code.

HISTORY

1. Amendment filed 4-1-54; effective thirtieth day thereafter (Register 64, No. 7).
2. Amendment adding subsection (d) filed 11-23-66; effective thirtieth day thereafter (Register 66, No. 41).
3. Repealer filed 6-6-80; effective thirtieth day thereafter (Register 80, No. 23).

§ 924. Trust and Agency Funds.

NOTE: Authority and reference cited: Section 30200, Government Code.

HISTORY

1. Repealer filed 6-6-80; effective thirtieth day thereafter (Register 80, No. 23).

§ 925. Intragovernmental Service and Enterprise Funds.

NOTE: Authority cited: Section 30200, Government Code. Reference: Section 30200, Government Code.

HISTORY

1. New section filed 4-1-64; effective thirtieth day thereafter (Register 64, No. 7).
2. Amendment of subsection (b) filed 9-16-70; effective thirtieth day thereafter (Register 70, No. 38).
3. Amendment filed 2-3-72; effective thirtieth day thereafter (Register 72, No. 6).
4. Amendment of subsection (b) filed 8-23-79; effective thirtieth day thereafter (Register 79, No. 34).
5. Repealer filed 6-6-80; effective thirtieth day thereafter (Register 80, No. 23).

§ 926. Special District and School Funds.

NOTE: Authority and reference cited: Section 30200, Government Code.

HISTORY

1. New section filed 4-1-64; effective thirtieth day thereafter (Register 64, No. 7).
2. Repealer filed 6-6-80; effective thirtieth day thereafter (Register 80, No. 23).

Article 4. Balance Sheet Accounts

§ 927. Chart of Accounts.

The following chart of balance sheet accounts shall be mandatory for all counties, wherever applicable:

(a) Assets.

Cash
Imprest cash
Cash with fiscal agents
Taxes receivable
Allowance for uncollectible taxes
Accounts receivable
Allowance for uncollectible accounts
Advances receivable
Advances to intragovernmental service and enterprise funds
Deposits with others
Inventory of materials and supplies
Investments
Land
Structures and improvements
Equipment
Construction in progress (7-1-68)
Future long term debt principal requirements
Bonds authorized-unissued

(b) Liabilities.

Warrants payable
Accounts payable
Tax anticipation notes payable
Advances payable
Deposits from others
Matured bond and interest payable
Other matured long term debt and interest payable
Bonds payable
Other long term debt payable

(c) Equities.

Fund balance—unavailable
Fund balance—available
Investment in general fixed assets (7-1-68)

(d) Operating Accounts.

Revenues
Expenditures

(e) Budgetary Accounts.

Estimated revenues
Unanticipated revenues
Unrealized estimated revenues
Appropriations
Encumbrances

HISTORY

1. Amendment of subsection (b) filed 9-16-70; effective thirtieth day thereafter (Register 70, No. 38). For prior history, see Register 69, No. 21.
2. Amendment of subsection (a) filed 2-3-72; effective thirtieth day thereafter (Register 72, No. 6).
3. Amendment of subsections (a) and (b) filed 3-8-77; effective thirtieth day thereafter (Register 77, No. 11).

§ 928. Funds Not Subject to Prescribed Accounts.

HISTORY

1. Repealer filed 2-3-72; effective thirtieth day thereafter (Register 72, No. 6).

Article 5. Revenue Accounts

§ 934. Classification.

The primary classification of revenues is according to source.

§ 935. Chart of Accounts.

The following chart of revenue accounts shall be mandatory for all counties, wherever applicable:

(a) Taxes.

Property taxes—current—secured
Property taxes—current—unsecured
Property taxes—prior—secured
Property Taxes—prior—unsecured
Penalties and costs on delinquent taxes
Sales and use taxes
Timber yield taxes
Other taxes

(b) Licenses, Permits and Franchises.

Animal licenses
Business licenses
Construction permits
Road privileges and permits
Zoning permits
Franchises
Other licenses and permits

(c) Fines, Forfeitures and Penalties.

Vehicle Code fines
Other court fines
Forfeitures and penalties

(d) Revenue From Use of Money and Property.

Interest
Rents and concessions
Royalties

(e) Aid From Other Governmental Agencies.

State—Alcoholic Beverage license fee
State aid for aviation
State—Highway Users Tax
State—Motor Vehicle in-lieu tax
State—Trailer Coach in-lieu tax
Other state in-lieu taxes
State—public assistance—administration
State aid for public administration programs
State—health—administration-
State aid for crippled children
State aid for cerebral palsy
State aid for mental health
State aid for tuberculosis control
Other state aid for health
State aid for agriculture
State aid for civil defense
State aid for construction
State aid for corrections
State aid for county fairs
State aid for disaster
State aid for veterans affairs
Homeowners' property tax relief
Business inventory property tax
State—other
Federal—public assistance administration
Federal aid for public assistance programs
Federal—health—administration-
Federal aid for construction
Federal forest reserve revenue
Federal revenue sharing
Federal in-lieu taxes
Federal—other
Other governmental agencies
Federal aid for disaster
Federal grazing fees
Other in-lieu taxes

(f) Charges for Current Services.

Assessment and tax collection fees
Civil process service
Auditing and accounting fees
Communication services
Election services
Inheritance tax fees
Legal services
Personnel services
Planning and engineering services
Purchasing fees
Agricultural services
Court fees and costs
Estate fees
Humane services
Law enforcement services
Recording fees
Road and street services
Health fees
Mental health services
Sanitation services
Adoption fees
Crippled children's services
Institutional care and services
Educational services
Library services
Park and recreation fees
Other

(g) Other Revenues.

Premiums and accrued interest on bonds issued
Revenue from discontinued districts
Revenue applicable to prior years
Sale of fixed assets
Other sales
Other

NOTE: Authority cited: Section 30200, Government Code. Reference: Section 30200, Government Code.

HISTORY

1. Amendment of subsection (a) filed 2-3-72; effective thirtieth day thereafter (Register 72, No. 6). For prior history, see Register 69, No. 21.
2. Amendment of subsection (e) filed 4-10-75; effective thirtieth day thereafter (Register 75, No. 15).
3. Amendment of subsection (e) filed 4-30-76; designated effective 7-1-76 (Register 76, No. 18).
4. Amendment of subsections (a), (b) and (c) filed 3-8-77; effective thirtieth day thereafter (Register 77, No. 11).
5. Amendment of subsection (a) filed 8-23-79; effective thirtieth day thereafter (Register 79, No. 34).

§ 936. Use of Subaccounts.

The Revenue Chart of Accounts contains the minimum accounts necessary to adequately account for the revenues of California counties, and provides the data necessary for statements and reports.

However, if local requirements for information make further breakdowns of any account necessary, counties may use such subaccounts as desired, provided they can be combined into the prescribed account framework for reporting.

Article 6. Expenditures

§ 940. Classification.

Expenditures are classified according to object, subobject, function and activity.

HISTORY

1. New Article 6 (§§940 through 945) filed 7-26-61; designated effective 7-1-62 (Register 61, No. 15).

§ 941. Expenditure Objects and Subobjects.

The following chart of expenditure object and subobject accounts shall be mandatory in all counties, whenever applicable. The subobjects "Retirement" and "Employee group insurance" are not necessarily applicable to each budget unit accounting for covered employees. Allocation of employee benefit costs to such units, while recommended, is not required.

(a) Salaries and Employee Benefits.

Salaries and wages
Compensation for approved leaves of absence with pay on account of sickness
Retirement
Employee group insurance
Workers' compensation insurance

(b) Services and Supplies.

Agricultural
Clothing and personal supplies
Communications
Food
Household expense
Insurance
Jury and witness expense
Maintenance—Equipment
Maintenance—Structures, improvements and grounds
Medical, dental and laboratory supplies
Memberships
Miscellaneous expense
Office expense
Professional and specialized services
Publications and legal notices
Rents and leases—Equipment
Rents and leases—Structures, improvements and grounds
Small tools and instruments
Special departmental expense
Transportation and travel
Utilities

(c) Other Charges.

Support and care of persons
Contributions to other agencies
Contributions to enterprise funds
Bond redemptions
Retirement of other long term debt
Interest on bonds
Interest on other long term debt
Interest on notes and warrants
Judgments
Rights of way
Taxes and assessments

(d) Fixed Assets.

Land Structures and Equipment improvements

(e) Expenditure Transfers and Reimbursements.

Costs applied

In addition to the accounts listed, there is one additional account, "Expenditures applicable to prior years," which is available for use as a subobject under any or all of the five major objects. Receipts or disbursements which adjust a prior year expenditure are posted to this account.

NOTE: Authority cited: Section 30200, Government Code. Reference: Section 30200, Government Code.

HISTORY

1. Amendment filed 4-1-64; effective thirtieth day thereafter (Register 64, No. 7).
2. Amendments of subsections (b) and (c) filed 5-21-69; effective thirtieth day thereafter (Register 69, No. 21).

3. Amendment of subsection (e) filed 5–14–76; designated effective 7–1–76 (Register 76, No. 18).
4. Amendment filed 3–8–77; effective thirtieth day thereafter (Register 77, No. 11).
5. Amendment of subsection (a) filed 8–23–79; effective thirtieth day thereafter (Register 79, No. 34).

§ 942. Use of Subaccounts.

The Expenditure Object and Subobject Chart contains the minimum accounts necessary to adequately account on this basis for the expenditures of California counties, and provides the data necessary for statements and reports.

However, if local requirements for information make further breakdowns of any expenditure necessary, counties may use additional accounts as desired, provided they can be combined into the prescribed account framework for reporting.

§ 943. Definitions.

(a) Function. A function is a group of services aimed at accomplishing a certain purpose or end.

(b) Activity. An activity is a specific line of work carried on by a county in order to perform its functions.

(c) Budget Unit. A budget unit is that classification of the expenditure and reserve requirements of the Budget into appropriately identified accounting or cost centers deemed necessary or desirable for control of the financial operations. Except as otherwise provided by law, such units may be devised at the discretion of the board.

§ 944. Expenditure Functions and Activities.

The following charter of expenditure functions and activities shall be mandatory in all counties, wherever applicable:

Function	*Activity*
(a) General	Legislative and administrative
	Finance
	Counsel
	Personnel
	Elections
	Communication
	Property management
	Plant acquisition
	Promotion
	Other general
(b) Public Protection	Judicial
	Police protection
	Detention and correction
	Fire protection
	Flood control and soil and water conservation
	Protection inspection
	Other protection
(c) Public Ways and Facilities	Public ways
	Transportation terminals
	Transportation systems
	Parking facilities
(d) Health and Sanitation	Health
	Hospital care
	Crippled children's services
	Sanitation
(e) Public Assistance	Administration
	Aid programs
	Medi–Cal contribution
	General relief
	Care of court wards
	Veterans' services
	Other assistance
(f) Education	School administration
	Library services
	Agricultural education
	Other education
(g) Recreation and Cultural Services	Recreation facilities
	Cultural services
	Veterans memorial buildings
	Small craft harbors
(h) Debt Service	Retirement of long term debt
	Interest on long term debt
	Interest on notes and warrants

HISTORY

1. Amendment of subsections (e) and (h) filed 3–8–77; effective thirtieth day thereafter (Register 77, No. 11). For prior history, see Register 76, No. 18.

§ 945. Application of Chart.

Each budget unit shall be classified as to function and activity. Costs of combined statutory offices which engage in more than one activity shall be allocated among the activities performed. In the absence of more refined allocation methods, a rough estimate may be used. With respect to other budget units which perform more than one activity, allocation is recommended but not required. If not allocated, such offices are classified according to the activity of greatest expenditure.

Article 7. Account Adjustment Policy

§ 946. Adjustments Necessary.

The proper classification of receipts and disbursements often requires adjustment of the revenue and expenditure accounts. Because of the possibility of inconsistent application among counties to a wide variety of situations, resulting in loss of budgetary control and uniformity in reports, these adjustments shall be made only in the situations indicated and in the manner prescribed in the following sections.

§ 947. Adjustments to Individual Accounts.

Adjustments to individual accounts are limited to reductions of specific accounts for (1) disbursements which correct a previous revenue, and (2) receipts which correct a previous expenditure.

These reductions should be entered in the proper revenue or expenditure accounts. When they affect transactions of a prior year they should reduce the accounts, "Revenues applicable to prior years" or "Expenditures applicable to prior years."

§ 948. Costs Applied.

Costs applied are defined as the interdepartmental transfer of materials and services, shown as a credit to the total expenditures of the transferring department.

These adjustments differ from adjustments to individual accounts as follows: There is no reduction of expense in the county group of funds taken as a whole; there is simply a reassignment of cost within that group; they do not represent corrections; the adjustment is not to a specific account, but to a group of accounts.

The costs applied device shall be used only within the general county group of funds. It does not apply to transactions between the county and: (1) private persons or agencies, or (2) cities and other governmental agencies required to file separate reports with the State Controller.

§ 949. Reimbursed Projects.

HISTORY

1. Repealer filed 4–30–76; designated effective 7–1–76 (Register 76, No. 18).

Subchapter 2. Budgeting Procedures for Counties

Article 1. General Instructions

§ 951. Purpose.

This Subchapter provides a collection point for State Code requirements, administrative directives and recommended practices pertaining to the form and content of the annual county budget and to those of special districts which are required to be included in the budget document. Anticipated benefits include:

(a) Consistent application of the law.
(b) Higher degree of comparability among county budgets.
(c) Written guidance for new personnel.

NOTE: Authority cited: Section 30200, Government Code.

HISTORY

1. Repealer of Subchapter 2 (§§961 and 962) and new Subchapter 2 (Sections 951–958, 961–967, 981–987, 991–994, 1001–1004, 1011–1015) filed 2–29–68; effective thirtieth day thereafter (Register 68, No. 9).

§ 952. Legal Basis.

The Government Code specifies the content of the budget, certain budget adoption procedures and dates by which actions must be taken. Districts whose affairs and finances are under the supervision and control of the county board of supervisors are subject to the same regulations.

§ 953. Forms.

The budget document must be on such forms as are prescribed by the State Controller, or approved variations of them.

§ 954. Permission to Deviate.

Permission to deviate from the prescribed forms must be obtained by written application addressed to: State Controller Division of Local Government Fiscal Affairs Sacramento, California

§ 955. Deviations Permitted.

Permission need not be obtained for the following:

(1) Addition of columns to prescribed forms, provided the presentation is not basically distorted.

(2) Moving budget unit function and activity designation from the right to left hand side of page.

(3) Choice of alternative sets of special district forms.

(4) Deviations previously authorized. Permission to change the language of prescribed column headings will not be granted.

§ 956. Funds and Accounts.

Fund and account titles to be used by counties in the preparation of the budget are those contained in the publication "Accounting Standards and Procedures for Counties," issued by the State Controller. Special districts required to be included in the budget document shall use fund and account titles contained in the publication, "Uniform Systems of Accounts for Special Districts."

§ 957. Whole Dollars.

All amounts should be expressed in whole dollars. Generally, fractions of a dollar should be adjusted to the closest whole dollar. This rule does not apply to tax rates.

§ 958. Definitions.

Basic terms used are defined:

(a) Budget. A comprehensive plan of financial operations embodying an estimate of proposed requirements for expenditure appropriations and provisions for reserves for a given period and the means of financing such requirements, as expressed in the official actions of the board.

(b) Budget Document. The instrument used to present the plan of financial operations of the county and of special districts whose affairs and finances are under the supervision and control of the board.

(c) Budget Unit. That classification of the expenditure and reserve requirements of the financial operational plan into appropriately identified accounting or cost centers deemed necessary and desirable for purposes of control of the financial operations.

(d) Estimated Revenues. The amount of revenue estimated to accrue or to be received (dependent on the basis of accounting) during a given period.

(e) Appropriations. Authorizations by the board to make expenditures and to incur obligations for specific purposes.

(f) Fund. A sum of money or other resources segregated for the purpose of carrying on specific activities or attaining certain objectives in accordance with special regulations, restrictions or limitations, and constituting an independent fiscal and accounting entity.

Article 2. General Plan

§ 961. Scope.

The county budget covers the operations of county operating and special revenue funds. Bond, intragovernmental service and enterprise funds are also included, but receive a different treatment (See Article 4, Special Funds). Funds of special districts whose affairs and finances are under the supervision and control of the county supervisors, while presented in the budget document, are a separate subject and are discussed in Subchapter 4, Article 1.

HISTORY

1. Amendment filed 2–3–72; effective thirtieth day thereafter (Register 72, No. 6).

§ 962. Property Taxes.

A computational end–product of the county budget is the amount of current property taxes and tax rates required for each fund. Property tax requirements are divided between the unsecured and secured rolls. The amount to be raised on the unsecured roll, determined by applying the preceding year's secured rate, is deducted from the total property tax requirement to obtain the amount which must be raised on the secured roll. If the computations result in fractions, the rate may be increased to the next whole cent.

§ 963. Budget Requirements.

Appropriations are authorizations for the county to make expenditures and to incur obligations during the current fiscal year. Amounts to be raised during the current fiscal period, but for which there is no appropriation, are termed provisions. The sum of appropriations and provisions is the total budget requirement.

§ 964. Appropriation Classifications.

Appropriations are classified by:
(a) Object
(b) Budget unit
(c) Activity
(d) Function
(e) Fund

Each budget unit is classified by function and activity. Budget units engaging in two or more activities are classified according to the activity of greatest expenditure, or, as is recommended, they may be segregated.

§ 965. Detail Within Each Budget Unit.

With certain exceptions (See Sections 994, 1002 and 1004), appropriations within each budget unit are segregated by expenditure objects:
(a) Salaries and employee benefits
(b) Services and supplies
(c) Other charges
(d) Fixed assets
(e) Expenditure transfers and reimbursements

Appropriations for fixed assets are further segregated by subobjects, as set forth in Article 6, Subchapter 1, and by project and equipment detail within subobjects. Subobjects of the remaining objects are required to be shown but are not legal components of adopted appropriations. At the option of the individual county all subjects may be given appropriation status.

When in the judgment of the board of supervisors it is in the best interests of the county to do so, a county may elect to eliminate the use of subobjects of expenditures, other than for fixed assets, from the budget document; when this option is exercised it shall be by resolution adopted at any regular meeting by a four–fifths vote of the Board. The county auditor shall forward a copy of the resolution to the State Controller within ten days of its adoption.

HISTORY

1. Amendment filed 9–16–70; effective thirtieth day thereafter (Register 70, No. 38).
2. Amendment filed 4–10–75; effective thirtieth day thereafter (Register 75, No. 15).

§ 966. Estimated Revenue Classifications.

Estimated revenues are in terms of the standard source of revenue accounts. They are listed in detail on Schedule 4 and summarized by fund on Schedule 3.

§ 967. County Budget Forms.

The forms prescribed for presentation of the county budget are:

Schedule	*Information Developed*
1	Fund requirements and available financing
2	Fund balance available
3	Summary of estimated revenues by fund
4	Detail of estimated revenues
5	Budget requirements by function, activity and budget unit
6	Appropriations by budget unit, contingency appropriations
7	Reserve provisions
8	Bond fund appropriations and expenditures
9	Internal service fund operating plans
10	Enterprise fund appropriations

HISTORY

1. Amendment filed 2–3–72; effective thirtieth day thereafter (Register 72, No. 6).
2. Amendment filed 6–6–80; effective thirtieth day thereafter (Register 80, No. 23).

Article 3. Expenditure Detail

§ 981. Salaries and Wages.

Appropriations are made in terms of total salaries before payroll deductions. Appropriations for salaries and wages of permanent and nonpermanent positions may be given in totals within each budget unit, provided that the estimates for salaries and wages of permanent positions are supported by a schedule setting forth for each position classification the salary rate or range and number of positions requested, recommended and approved.

§ 982. Employee Benefits.

Total employee benefits should be shown in a separate budget unit. The amount of benefits applicable to each budget unit may also be shown. If this is done the total of the benefits so allocated is credited against the total appropriations of the central budget unit.

NOTE: Authority cited: Section 30200, Government Code. Reference: Section 30200, Government Code.

HISTORY

1. Amendment filed 8–23–79; effective thirtieth day thereafter (Register 79, No. 34).

§ 983. Salary Savings.

A salary savings account is sometimes used to estimate the savings to result from employee turn–over—replacement of a terminating employee with a new employee at a lower step in the salary range. Use of a salary savings account is permissible provided it is included within the Salaries and Employee Benefits object in each budget unit, if applicable. Salary savings need not be shown separately, but may be netted from salary and wage appropriations.

§ 984. Fixed Assets.

The detail of fixed asset acquisitions other than land must be shown in the budget, or, in the case of equipment, be readily available in a separate document. Proposed acquisitions of structures and improvements must be itemized by project.

§ 985. Cost Applied.

The anticipated transfer of the cost of services of one budget unit rendered to another is shown as a credit to the total appropriations of the budget unit from which the transfer will be made. The posting is to the account, Costs Applied, which has just the reverse effect as the regular appropriation accounts. In the receiving budget unit the appropriation is to the object appropriate to the service rendered. The same appropriation amount thus appears in the county budget twice, once in the receiving budget unit and once in the transferring budget unit. The latter, however, is in effect canceled by the negative appropriation to the Costs Applied account.

§ 986. Reimbursed Projects.

HISTORY

1. Repealer filed 4–30–76; designated effective 7–1–76 (Register 76, No. 18).

§ 987. Subaccounts.

Information may be shown in more specific fashion than provided by the subobject accounts as long as subaccounts are identified with the proper subobject. The subobject should be listed without dollar amounts with the subaccounts underneath and indented to the right.

§ 988. Construction by Force Account.

Force account is defined as "A method employed in the construction and/or maintenance of fixed assets whereby a governmental unit's own personnel are used instead of an outside contractor." (MFOA)

On Schedule 6 of the Final Budget for the activity "Plant Acquisition," the total of all projects shall be summarized between "Force Account" and "Contract." The two summary totals need not be identified with individual projects.

The same procedure applies to schedules for intergovernmental service and enterprise operations.

NOTE: Authority cited: Sections 30200 and 53891, Gov. Code.

HISTORY

1. New section filed 3–31–70; designated effective 7–1–70 (Register 70, No. 14).
2. Amendment filed 12–14–72; effective thirtieth day thereafter (Register 72, No. 51).

Article 4. Special Budget Units

§ 991. Contingencies.

The budget of a fund may contain an appropriation for contingencies, limited to 10% of its non–contingency appropriations. An additional appropriation for contingencies may be included in the General Fund or in a separate Contingency Fund, limited to 10% of the following base:

Total appropriations of funds which do not include a contingency appropriation, reduced by appropriations for bonded debt service.

These amounts are appropriated through the budget process. However, to make them specific and to authorize expenditures against them, a four–fifths vote of the board is required.

Whether in a separate fund or within a fund, all contingencies appropriations are collected in a separate budget unit. The financing fund for each appropriation is designated.

§ 992. Capital Projects.

Appropriations for structures and improvements to real property should be centralized in a single budget unit, regardless of the source of financing. Appropriations are detailed by project and the financing fund stated for each. This does not apply to bond fund appropriations.

§ 993. Welfare Program.

A county budget unit can normally be classified under a single activity. A budget unit containing all the welfare categorical aids gives rise to an opposite situation—several activities are represented in one budget unit. Amounts applicable to each must be indicated and brought forward to the proper activity summary.

§ 994. Road Construction and Maintenance Activity.

In addition to, and in similar manner as prescribed for the estimates of expenditures classified by objects of expenditure, the official or person in charge of the roads function of the county shall also file a supporting statement setting forth the proposed work program for the year for which the budget is to apply. The proposed work program shall be construed to be the prescribed alternate procedure in lieu of the subobjects of expenditure as referred to in Section 965 of Article 2, and shall be arranged to set forth the data, as applicable in terms of the major operational classifications, namely:

(1) Administration
(2) Construction
(3) Maintenance
(4) Aid to Other Governmental Agencies
(5) Acquisition of Equipment
(6) Plant Acquisition
(7) Reimbursable Work
(8) Cost Transfers and Reimbursements

The Construction and the Plant Acquisition classifications shall be itemized by appropriately identified projects with estimated costs thereof, except that minor betterment projects in each classification may be grouped and shown in lump–sum amounts. Any of the other classifications may be further classified by such subactivities or itemization as is deemed desirable or necessary for administrative control purposes.

The work program statement shall be subject to the same procedures of review and revision as other estimates but need not be formally adopted by the board. It shall be included in the budget document as a supporting statement to the official budget estimates classified by objects of expenditures. It shall be subject to such administrative controls as deemed necessary and appropriate by the board.

HISTORY

1. Amendment file 12–14–72; effective thirtieth day thereafter (Register 72, No. 51).

Article 5. Special Funds

§ 1001. Bond Funds.

Proceeds from the sale of bonds are appropriated at the time of the bond election for the purposes stated in the proposal. For informational purposes, project appropriations and expenditures to date are required to be shown on Schedule 8. These amounts are not brought forward to the summary schedules.

§ 1002. Intragovernmental Service Funds.

A separate Schedule 9 is provided for presentation of the managerial budget of each intragovernmental service fund. Anticipated revenues and expenses are shown in terms of accounts deemed most appropriate for the activity. Comparative data for prior years must be shown. Supplementary schedules showing planned fixed asset acquisitions and salaries by position, if not already itemized in the budget, must accompany the presentation. The managerial budget must be adopted by the supervisors, although amounts are not brought forward to the budget summaries.

HISTORY

1. Amendment filed 2–3–72; effective thirtieth day thereafter (Register 72, No. 6).

§ 1003. Enterprise Funds.

A budget must be included for each enterprise fund on a separate Schedule 10. The budget is expressed in terms of the revenue and expense accounts prescribed for the activity in which the enterprise is engaged (See Section 905). General requirements regarding prior year comparative data, salary schedules and fixed asset acquisition detail apply. Budgeted revenues and expenses are not included in budget summaries.

HISTORY

1. Amendment filed 9–16–70; effective thirtieth day thereafter (Register 70, No. 38).
2. Amendment filed 2–3–72; effective thirtieth day thereafter (Register 72, No. 6).

§ 1004. Hospital Enterprise Funds.

HISTORY

1. Repealer filed 2–3–72; effective thirtieth day thereafter (Register 72, No. 6).

Article 6. Special Procedures

§ 1011. Provisions.

Provisions result in increases in reserves. They are detailed in Schedule 7. Typical provisions are those to increase the general reserve, accumulative capital outlay reserves, and reserves for inventories, advances to intragovernmental service funds, and allowable long–term loans. All provisions are shown in one budget unit. The fund to which each belongs is designated. It is recommended that balances to be retained in reserves not be cancelled at the end of each year, and that the provision be in the amount of the increase only.

HISTORY

1. Amendment filed 2–3–72; effective thirtieth day thereafter (Register 72, No. 6).

§ 1012. Reserve Reductions.

Cancellation of reserves releases resources for financing the current budget. Cancellation is effected by omitting the amount to be cancelled as a deduction from the total fund balance on Schedule 2. Reserve reductions are shown on Schedule 7.

§ 1013. Prior Year Encumbrances.

Encumbrances outstanding at the close of the year preceding the year covered by the budget are shown by fund in the column provided on Schedule 2. Such amounts, along with other reserves, are deducted from the total fund balance to arrive at the available fund balance. Appropriations corresponding to prior encumbrances are not shown in the current budget. Board approval of the overall budget, which includes the reserve for encumbrances, is the authority for re–establishment of encumbrances and related appropriations in the new year.

§ 1014. Interfund Transfers.

Schedule 2 provides a column in which both transfers in and out of funds may be entered. The arithmetic total of all entries in this column should, of course, be zero.

In the receiving fund the incoming money attaches to no particular budget unit, but supports the total fund program. This device is used only in special situations, such as to close out the remaining balance of a fund which has served its purpose, or to comply with a legal requirement that money be deposited in a special revenue fund as a condition for subvention. It should not be used as a substitute for the Costs Applied or Joint Fund Financing procedures.

§ 1015. Joint Fund Financing.

A budget unit may be financed by two or more funds. In a centralized budget unit for structures and improvements, the fund financing each project is indicated. In other jointly–financed units, amounts to be financed from each fund are shown under the total appropriations.

Subchapter 2.5. Rules and Regulations to Administer Reimbursements to Counties for the Cost of Homicide Trials

Article 1. General

§ 1020.1. Threshold Limit.

NOTE: Authority cited: Section 15204, Government Code. Reference: Sections 15201 and 15202, Government Code.

HISTORY

1. New Subchapter 2.5 (Articles 1–4, Sections 1020.1–1023.5, not consecutive) filed 3–14–83; effective thirtieth day thereafter (Register 83, No. 12).
2. Repealer filed 5–13–87; operative 5–13–87 (Register 87, No. 21).

§ 1020.2. Audits.

All costs claimed pursuant to Government Code Sections 15202 and 15203 may be periodically reviewed by the State Controller to insure that on their face such claims meet the requirements of Government Code Section 15201. Costs eligible for reimbursement must be reasonable and necessary costs incurred by the county as a result of the criminal proceeding which would not have been incurred but for the trial, and do not include normal salaries, overhead, and other expenses, unless otherwise provided in Government Code Section 15202(b). At the conclusion of the trial, the State Controller may conduct an audit of selected claims as he deems necessary.

NOTE: Authority cited: Section 15204, Government Code. Reference: Sections 15201, 15202 and 15203, Government Code.

HISTORY

1. Amendment filed 5–13–87; operative 5–13–87 (Register 87, No. 21).

Article 2. Costs Eligible for Reimbursement

§ 1021.1. Court Costs.

(a) The costs incurred as a result of judges sitting under assignment including travel, board, and lodging may be reimbursed. See Government Code Section 68540(a), Government Code Section 68542, and Title 2, California Administrative Code, Sections 700 through 715 and Section 718.

(b) Reporter's fees may be reimbursed in accordance with Government Code Sections 69947 through 69952. In counties where an ordinance prescribes the official reporters fee rate, the county may be reimbursed at the rate prescribed in the ordinance.

(c) County costs incurred for extra judicial assistance provided to a one–judge court, in order to allow the conduct of that court's normal workload when its only judge is presiding at the trial of a case eligible for reimbursement under Government Code Section 15201, may be reimbursed.

NOTE: Authority cited: Section 15204, Government Code. Reference: Sections 15201 and 15202, Government Code.

HISTORY

1. Amendment of subsection (a) filed 5–13–87; operative 5–13–87 (Register 87, No. 21).

§ 1021.2. Jury Costs.

(a) Fees and mileage may be reimbursed within the limits set forth in Penal Code Section 1143.

(b) Room and board for sequestered jurors may be reimbursed in accordance with Penal Code Section 1136. The court order sequestering the jury must be retained for audit examination.

NOTE: Authority cited: Section 15204, Government Code. Reference: Section 15201, Government Code.

§ 1021.3. Witness Fees and Expenses.

(a) Where allowed by the Court, subpoenaed witness fees and expenses may be reimbursed at rates or amounts determined pursuant to Penal Code Section 1329. The pertinent subpoena and the court order must be retained for audit examination.

(b) County costs for expert witnesses appointed by the court pursuant to Evidence Code Section 730 may be reimbursable. The court orders appointing such expert witnesses and establishing compensation for same, must be retained for audit examination.

NOTE: Authority cited: Section 15204, Government Code. Reference: Section 15201, Government Code.

§ 1021.4. Legal Expenses (Prosecution and Defense).

(a) Normal salaries and benefits for county employees are not reimbursable unless otherwise provided in Government Code Section 15202(b); overtime and fringe benefits actually paid for regular county employees may be reimbursable if such overtime is directly attributable to the case. The necessity, duration, and extent of the overtime must be fully explained and authorized by the appropriate supervisor in writing, and must be documented in accordance with written county personnel policies. Overtime documentation must be retained for audit examination.

(b) Assigned counsel fees, costs, or expenses may be reimbursable if such fees, costs or expenses are consistent with the provisions of Penal Code Section 987.2.

(c) With the exception of county employees, all attorneys and their support personnel must have a written contract indicating the rate of compensation, including that for trial work, overtime, costs, and expenses. The contract with non–county personnel shall specify the fee or rate of pay, and the treatment of overtime if applicable. Overtime will be as defined by the individual counties. County costs incurred pursuant to such contracts may be reimbursable.

(d) In order to be considered for reimbursement, charges for the services of outside contractors, including court appointed attorneys, must be supportable through adequate timekeeping records. Time charged must be approved by the appropriate contract supervisor or county official. Records maintained for billing purposes by court appointed attorneys, investigators, consultants, experts, and others shall be made available to the State Controller's Office, upon request, for examination. Such records will be reviewed to determine the reliability of timekeeping records submitted to the county.

(e) To be eligible for reimbursement, fees for court appointed attorneys, consultants, and experts, etc., must be determined by the trial judge. Reimbursement shall exceed neither the customary fees allowed by the courts for services in capital cases nor any fee limitation imposed by statute.

NOTE: Authority cited: Section 15204, Government Code. Reference: Section 15201, Government Code; and Statutes of 1986, Chapter 186, Item 8180–101–001 (Budget Act of 1986 which expires after June 30, 1987).

HISTORY

1. Amendment of subsections (a) and (e) filed 5–13–87; operative 5–13–87 (Register 87, No. 21).

§ 1021.5. Investigation Expenses (Prosecution and Defense).

(a) Investigation costs of the district attorney, public defender, sheriff and court–appointed attorney or attorneys may be reimbursable. As provided in Government Code Section 15201, normal salaries and expenses incurred by the county are not reimbursable unless otherwise provided in Government Code Section 15202(b).

(b) The trial judge must determine a reasonable rate of compensation for investigators used by the prosecution and/or defense in order for such compensation to be eligible for reimbursement. Rates may be based on the prevailing rate in capital cases. Reimbursement shall be subject to any limitation imposed by statute.

(c) Specific documentation requirements for investigation expenses are provided in Section 1021.4.

NOTE: Authority cited: Section 15204, Government Code. Reference: Section 15201, Government Code; and Statutes of 1986, Chapter 186, Item 8180–101–001 (Budget Act of 1986 which expires after June 30, 1987).

HISTORY

1. Amendment filed 5–13–87; operative 5–13–87 (Register 87, No. 21).

§ 1021.6. Travel Expenses.

(a) Travel expenses for mileage, room and board, and per diem, may be reimbursable in accordance with written county policy, but may not exceed the rates outlined in Title 2, California Administrative Code, Sections 700 through 715 and Section 718.

(b) To be reimbursed for out–of–state and/or foreign travel costs, the county shall, to the extent possible, obtain from the trial judge a determination whether the contemplated trip is necessary and reasonable. The county shall obtain the determination prior to the travel.

(c) Travel beginning before Monday, and/or ending after Friday, must be justified in writing.

(d) Documentation supporting travel and per diem expenses shall be in accordance with county policy; provided such policy substantially conforms to Title 2, California Administrative Code, Sections 700 through 715 and Section 718. If county documentation requirements do not substantially conform to the California Administrative Code, then the county shall, to the extent possible, retain documentation which substantially conforms to Title 2, California Administrative Code, Sections 700 through 715 and Section 718.

NOTE: Authority cited: Section 15204, Government Code. Reference: Sections 15201 and 15202, Government Code.

HISTORY

1. Amendment of subsection (a) filed 5–13–87; operative 5–13–87 (Register 87, No. 21).

§ 1021.7. Sheriff Costs.

(a) All costs of security, over and above regular personnel costs, may be reimbursable.

(b) Costs for temporary personnel hired specifically to fill in for peace officers used in court security may be reimbursable. Courthouse security costs, over and above regular personnel costs, may be reimbursable.

(c) In a change of venue, "all costs," as defined in Penal Code Section 1037, may be reimbursed.

NOTE: Authority cited: Section 15204, Government Code. Reference: Section 15201, Government Code.

§ 1021.8. Reimbursable Miscellaneous Costs.

(a) The cost of equipment rentals and/or purchases may be reimbursed if the following conditions are met:

(1) To be reimbursable, rental costs must be incurred solely because of the trial. Rental contracts must be retained for examination. The Controller's Office requires that, whenever possible, lease/rental–purchase agreements be used. The Controller's Office will not reimburse for equipment rental costs which exceed the original purchase price and the normal finance charge.

(2) The county's normal procurement procedures may be used for reimbursable equipment purchases. The county must obtain Controller's approval before purchasing any equipment for which the county will seek reimbursement. Reimbursements for equipment purchases will be made on a prorata basis. Proration will be determined by comparing the total monthly usage to the estimated useful life of the equipment. Whenever possible, IRS Publication 534, "Depreciation Tables," will be used as an independent guideline to establish estimated useful life.

(3) Every three months the county shall submit to the State Controller's Office an up to date inventory. That inventory may include items purchased and/or rented for which reimbursement has, or will be claimed. At a minimum, the inventory shall include:

(A) a general description of the item purchased and/or rented;

(B) amount of purchase and/or rental charge to date;

(C) name of vendor;

(D) location of item purchased and/or rented.

(b) Building improvements or construction must be ordered by the court as necessary security measures in order to be considered for reimbursement by the state. Such building improvements and/or construction costs may be reimbursed on a prorata cost basis. The ratio of the number of months that the building improvement or construction is used during the proceedings to the estimated useful life may be used in determining prorata cost.

(c) Reporter files and transcript costs may be reimbursed at the rates set forth in Government Code Sections 69947 to 69950. Invoices presented for payment must include the number of pages of transcript and folio count per page used in determining total folio count.

(1) The following definitions are applicable:

(A) A transcript is a record of testimony before the court.

(B) Words will be counted on a number of sample pages of transcript to determine average folio count per page. That average will be extended to the total number of pages.

(C) A folio is defined as 100 words, phrases, or characters.

(D) Examples of material included in folio count are:

1. Contractions count as two words, i.e., the word "can't" counts as two words.

2. Numerals each count as a word, i.e., "May 5, 1979" counts as six words.

3. Alpha numeric phrases count as one word for each character, i.e., "AR 317.5 G" counts as seven words.

4. Speaker identification is included, i.e., "Mr. Jones," "the witness," "the court," "Q," "A." (Eight words shown.)

5. Hyphenated words count as two words, i.e., "home–owned" counts as two words.

6. The date and time stated at the beginning of each session is included in the folio count.

7. Abbreviations are counted as if the words were written out, i.e., "Mr.," "Dr.," "Sgt.," "U.S.A." (Six words shown.)

(E) Examples of material not included in folio count are:

1. Title page;

2. Indexes to witnesses, exhibits, etc.;

3. Reporter's certification page;

4. Reporter's commentary on events in courtroom that are not part of testimony;

5. Reporter's description of exhibits that are not part of testimony;

6. Page numbers.

NOTE: Authority cited: Section 15204, Government Code. Reference: Section 15201, Government Code.

Article 3. Costs Not Eligible for Reimbursement

§ 1022.1. Confidential Costs.

Costs which defense or prosecution may consider confidential shall not be submitted to the Controller for reimbursement until confidentiality is no longer an issue.

NOTE: Authority cited: Section 15204, Government Code. Reference: Section 15201, Government Code.

§ 1022.2. Other Costs.

Other costs which are not reimbursable include, but are not limited to:

(a) Administrative and countywide indirect overhead costs (except in those cases where it can be identified that additional support services were required due to the trial).

(b) Accounting services.

(c) Amortization.

(d) Auditing services, unless such costs directly relate to the trial. Prior to incurring such costs, the County Auditor–Controller should obtain approval from the State Controller's Office.

(e) Bailiff (except as provided in Section 1021.7).

(f) Bond premiums.

(g) Books (e.g., standard legal reference sets, law books, or periodicals).

(h) Budgeting services.

(i) Business services.

(j) Clerk of the Court.

(k) Construction (e.g., capital expenditures, security or restraint fixtures) unless ordered by the court and pursuant to provisions of Section 1021.8.(b).

(l) Depreciation.

(m) Employee relocation.

(n) Insurance (e.g., liability, fire).

(o) Landscaping.

(p) Memberships.

(q) Organization development.

(r) Research of a general nature. Research directly related to the trial is reimbursable.

(s) Search and apprehension of escaped defendants.

(t) Subscriptions (e.g., magazines, newspapers).

(u) Support of central services divisions.

(v) Use allowance (e.g., use of county owned facilities).

(w) Unpaid overtime to employees.

(x) Unpaid employer's share of staff benefits.

NOTE: Authority cited: Section 15204, Government Code. Reference: Section 15201, Government Code.

Article 4. Miscellaneous

§ 1023.1. Documentation.

Any cost claimed for reimbursement must be supported by adequate documentation and be readily traceable through county records and books of accounts.

NOTE: Authority cited: Section 15204, Government Code. Reference: Sections 15201 and 15203, Government Code.

§ 1023.2. Costs Ordered by the Court.

Costs incurred pursuant to a court order must be supported by sufficient documentation for the Controller to determine whether the costs are directly related to the trial, and whether they are reasonable and necessary.

NOTE: Authority cited: Section 15204, Government Code. Reference: Sections 15201 and 15203, Government Code.

§ 1023.3. Forms.

Costs claimed for state reimbursement shall be filed on forms prescribed or approved by the State Controller's Office.

NOTE: Authority cited: Section 15204, Government Code. Reference: Sections 15201 and 15203, Government Code.

§ 1023.4. Other Reimbursement.

Any cost reimbursable from another source shall not be reimbursed under Government Code Section 15202.

NOTE: Authority cited: Section 15204, Government Code. Reference: Sections 15201 and 15203, Government Code.

§ 1023.5. Filing.

Counties shall submit claims periodically, pursuant to an agreement between the county and the State Controller, but no less frequently than quarterly.

NOTE: Authority cited: Section 15204, Government Code. Reference: Sections 15201 and 15203, Government Code.

Article 5. Reimbursement for Court–Ordered Expenses of Indigent Defendants in Capital Cases

§ 1025.1. Cost Eligible for Reimbursement.

A county is eligible to receive reimbursement for disbursements made by the county for court approved costs under Section 987.9 which comply with the provisions of that section, as implemented by this Article. Where used in this Article, the term "county" shall include a city and county.

NOTE: Authority cited: Item 8160–111–001, Budget Act of 1983 (Chapter 324 of the Statutes of 1983). Reference: Item 8160–111–001, Budget Act of 1983 (Chapter 324 of the Statutes of 1983); and Section 987.9, Penal Code.

HISTORY

1. New Article 5 (Sections 1025.1–1025.5, 1026.1–1026.2 and 1027.1–1027.6) filed 1–29–85; effective thirtieth day thereafter (Register 85, No. 5).

§ 1025.2. Investigators.

(a) The costs of investigators are reimbursable at a rate not to exceed the prevailing rate paid investigators performing similar services in capital cases.

(b) The cost of an investigation conducted by an attorney is reimbursable if the investigating attorney is not an attorney of record in the capital case. Such reimbursement shall not exceed the prevailing rate paid investigators performing similar services in capital cases. For the purpose of this subsection, "investigation" does not include legal research or legal representation.

NOTE: Authority cited: Item 8160–111–001, Budget Act of 1983 (Chapter 324 of the Statutes of 1983). Reference: Item 8160–111–001, Budget Act of 1983 (Chapter 324 of the Statutes of 1983); and Section 987.9, Penal Code.

§ 1025.3. Other Expenses.

Reasonable costs of consultants, expert witnesses, and others are reimbursable. Reasonableness shall be determined by such factors as prevailing rates for similar services, customary fees normally approved by the court for similar services, or such other criteria or standard of comparison as may be reasonable for a particular expense.

NOTE: Authority cited: Item 8160–111–001, Budget Act of 1983 (Chapter 324 of the Statutes of 1983). Reference: Item 8160–111–001, Budget Act of 1983 (Chapter 324 of the Statutes of 1983); and Section 987.9, Penal Code.

§ 1025.4. Travel.

Travel expenses, including expenses for room and board, are reimbursable under the following conditions:

(a) Actual and necessary expenses are claimed and do not exceed State Board of Control standards for travel and per diem expenses (Title 2, California Administrative Code, commencing at Section 700);

(b) In the case of out–of–state travel, the court specifically authorized the travel pursuant to Section 987.9.

(c) A travel expense claim is submitted with the accounting which substantially conforms to State travel expense claims and sets forth the following information:

(1) Name and address (business and residential) of person incurring the expense.

(2) Date and time of departure and return for each trip.

(3) Description of each expense claimed.

(4) If a private automobile is used, the number of miles traveled.

(5) Cost of commercial transportation. Appropriate receipts should be attached.

(6) A detail of the amount of carfare, bridge tolls, and parking charges the daily sum of which exceeds $2.50, and receipts for parking charges exceeding $3.50 for any one continuous period of parking.

NOTE: Authority cited: Item 8160–111–001, Budget Act of 1983 (Chapter 324 of the Statutes of 1983). Reference: Item 8160–111–001, Budget Act of 1983 (Chapter 324 of the Statutes of 1983); and Section 987.9, Penal Code.

§ 1025.5. Supplies and Equipment.

(a) Reasonable and necessary expenditures by investigators, consultants, experts, or others for material and supplies are reimbursable

(b) The cost of equipment rental is reimbursable to the extent such cost does not exceed the retail purchase price of the equipment, provided:

(1) The equipment is used solely for the capital case which is the subject of the claim; and

(2) A copy of the rental contract is submitted to the State Controller with the accounting referred to in Section 1027.2 of this Article.

(c) In lieu of renting, the cost of purchasing equipment is reimbursable under the following conditions:

(1) Extraordinary circumstances necessitate the purchase of the equipment;

(2) The purchase is specifically approved by the court;

(3) Justification for the purchase is provided to the State Controller in writing;

(4) A copy of the purchase invoice is submitted to the State Controller with the accounting; and

(5) Reimbursement is limited to the difference between the purchase price and the fair market value of the equipment at the time it is no longer needed for the preparation or presentation of the defense.

NOTE: Authority cited: Item 8160–111–001, Budget Act of 1983 (Chapter 324 of the Statutes of 1983). Reference: Item 8160–111–001, Budget Act of 1983 (Chapter 324 of the Statutes of 1983); and Section 987.9, Penal Code.

§ 1026.1. Costs Not Reimbursable.

The following costs are not eligible for reimbursement:

(a) Dental plates, haircuts, and other expenses relating to improving the defendant's personal appearance;

(b) Clothing;

(c) Cleaning charges (clothing);

(d) Cash to defendant;

(e) Attorney fees or costs whether or not for an attorney identified of record;

(f) Any cost reimbursable from another source.

Other costs not listed above will also be ineligible for reimbursement if they are not otherwise allowable under Section 987.9 and this Article.

NOTE: Authority cited: Item 8160–111–001, Budget Act of 1983 (Chapter 324 of the Statutes of 1983). Reference: Item 8160–111–001, Budget Act of 1983 (Chapter 324 of the Statutes of 1983); and Section 987.9, Penal Code.

§ 1026.2. Reduction of Capital Charge.

Costs incurred after the case against the indigent defendant no longer involves the death penalty are not reimbursable. A case shall be consid-

ered as not involving the death penalty where either the allegations of special circumstances have been dismissed or the prosecution has formally elected not to seek the death penalty.

NOTE: Authority cited: Item 8160-111-001, Budget Act of 1983 (Chapter 324 of the Statutes of 1983). Reference: Item 8160-111-001, Budget Act of 1983 (Chapter 324 of the Statutes of 193); and Section 987.9, Penal Code.

§ 1027.1. Claims to the State Controller for Reimbursement.

Subsequent to any disbursement pursuant to the ruling of a court under Section 987.9, the county making the disbursement may apply for reimbursement in accordance with this Article. Any such reimbursement is subject to subsequent audit, and recoupment to the extent the reimbursement exceeded the amount permitted by these regulations.

NOTE: Authority cited: Item 8160-111-001, Budget Act of 1983 (Chapter 324 of the Statutes of 1983). Reference: Item 8160-111-001, Budget Act of 1983 (Chapter 324 of the Statutes of 1983); and Section 987.9, Penal Code.

§ 1027.2. Accounting to the State.

Not later than six months after the judgment becomes final in a case in which funds were disbursed under Section 987.9, the county auditor shall provide to the State Controller a copy of the accounting filed by defendant's attorney with the court. If such accounting is not furnished to the State Controller within said period, the State Controller shall notify the county auditor in writing of noncompliance with this section. If the county fails to provide a copy of the accounting to the State Controller within thirty days of receipt of such notice, the State Controller may recover through offset against other payments due the county the amount of any reimbursements made to the county for the particular case.

NOTE: Authority cited: Item 8160-111-001, Budget Act of 1983 (Chapter 324 of the Statutes of 1983). Reference: Item 8160-111-001, Budget Act of 1983 (Chapter 324 of the Statutes of 1983); and Section 987.9, Penal Code.

§ 1027.3. Documentation.

The accounting provided the State Controller shall be supported by sufficient details and documentation for the State Controller to determine whether the expenditures of defendant's attorney were authorized by the provisions of the Article and Section 987.9.

NOTE: Authority cited: Item 8160-111-001, Budget Act of 1983 (Chapter 324 of the Statutes of 1983). Reference: Item 8160-111-001, Budget Act of 1983 (Chapter 324 of the Statutes of 1983); and Section 987.9, Penal Code.

§ 1027.4. Remittance of Refunded Monies.

The county auditor shall immediately remit to the State any moneys refunded by defense counsel to the extent that reimbursement had been made by the State.

NOTE: Authority cited: Item 8160-111-001, Budget Act of 1983 (Chapter 324 of the Statutes of 1983). Reference: Item 8160-111-001, Budget Act of 1983 (Chapter 324 of the Statutes of 1983); and Section 987.9, Penal Code.

§ 1027.5. Summary Statement of Funds.

After the close of each fiscal year, the State Controller shall provide each county receiving reimbursements under Section 987.9 a summary statement of funds advanced to the county, and the amount of any funds due to the county from the State or owed by the county to the State.

NOTE: Authority cited: Item 8160-111-001, Budget Act of 1983 (Chapter 324 of the Statutes of 1983). Reference: Item 8160-111-001, Budget Act of 1983 (Chapter 324 of the Statutes of 1983); and Section 987.9, Penal Code.

§ 1027.6. Audits.

All claims for costs pursuant to Section 987.9 are subject to review by the State Controller to ensure that, on their face, such claims meet the requirements of Section 987.9 and this Article. The State Controller may conduct such further audit of a claim or payment as he deems necessary, including an audit subsequent to the filing of the accounting referred to in Section 1027.2 of this Article.

NOTE: Authority cited: Section 12410, Government Code. Reference: Section 12410, Government Code; and Section 987.9, Penal Code.

Subchapter 3. Accounting Procedures for Special Districts

Article 1. General Information

§ 1031.1. Authority.

These accounting systems are in compliance with Section 53891 of the Government Code, which requires the State Controller to prescribe uniform accounting and reporting procedures which shall be applicable to all special districts, except as exempted. Eligibility for exemption and the procedure for obtaining it are covered in Section 1032.

NOTE: Authority cited: Section 53891, Government Code.

HISTORY

1. New Subchapter 3 (§§ 1031 through 1031.10, 1032, 1041.1 through 1041.13, 1042, 1043.1 through 1043.4, 1051.1 through 1051.13, 1052, 1053.1 through 1053.5, 1061.1 through 1061.13, 1062, 1063.1 through 1063.6 and 1081) filed 4-7-67; designated effective as to Districts on a calendar year—1-1-68, and as to Districts not on a calendar year—at the beginning of the first fiscal year commencing after 1-1-68 (Register 67, No. 14).

§ 1031.2. Advisory Committee.

The requirements herein prescribed have been approved by the Advisory Committee to the State Controller on Reporting of Financial Transactions of Local Government Agencies, as required by Section 53891 of the Government Code.

§ 1031.3. Purpose.

The purpose of the accounts and procedures is to furnish a common accounting and reporting framework for all special districts within a designated class, flexible enough to accommodate any legal freedoms of action and needs of individual districts.

§ 1031.4. Application of Article 1.

Information in this article applies to each of the systems of accounting in subsequent articles.

§ 1031.5. Accounting Principles.

Generally accepted principles and conventions of governmental accounting, as set forth in Municipal Accounting and Auditing, published by the National Committee on Governmental Accounting, have been employed in the development of the several systems. Various other publications have been used in specialized areas.

§ 1031.6. Accounting Method.

The accounting method with a general ledger with a self-balancing group of accounts is prescribed.

§ 1031.7. Account Code Numbers.

Account titles are prescribed; account numbers are not. Each district may devise the system of coding regarded as most useful for its situation.

§ 1031.8. Two or More Activities.

The following policy governs the accounting for districts engaged in two or more activities:

(1) A district performing a recognized utility activity must account for that activity under one of the systems prescribed in Articles 1-9.

(2) Such a district may account for its non-utility activities on an enterprise basis, if desired. However, each activity must be reported to the State Controller according to the basis prescribed by him for that activity.

§ 1031.9. Materiality.

The test of materiality is implicit in each system. Small amounts may be accorded a convenience treatment, so long as the possible distortion of financial position and results of operations is negligible.

§ 1031.10. Consistency.

Each system includes accounting situations over which the individual district may exercise an option. Whenever a change has been made from

one acceptable practice to another and the effects on the accounts involved are significant, disclosure is required in reports and statements.

§ 1031.11. Interest on Bond Proceeds.

When bond proceeds are invested prior to their use for the purpose for which the bonds were issued, the earnings shall be applied toward debt service as indicated in Section 29303 of the Government Code, unless a different disposition is prescribed in law or in the resolution authorizing the bonds. (Effective with respect to bonds issued on or after the effective date of each accounting system)

HISTORY

1. New section filed 12–6–67; effective thirtieth day thereafter (Register 67, No. 49).

§ 1031.12. Priority of Legal Requirements.

When a legal requirement imposed by this system of accounts is in conflict with requirements of State Codes, bond indentures, contractual arrangements with other governmental agencies, or other legal requirements, the latter shall have priority.

HISTORY

1. New section filed 12–6–67; effective thirtieth day thereafter (Register 67, No. 49).

§ 1031.13. Assets Held Under Lease Agreements.

A district shall account for and report leases of assets from others as follows. If the lease is a non–cancellable financing arrangement under which the lessee acquires the facility, the asset shall be capitalized and the related liability recorded, both in the amount of total payments due, less interest included. If the lease is cancellable or no property or other rights of value accrue to the district, periodic payments are charged to expense.

NOTE: Authority cited: Sections 30200 and 53891, Government Code. Reference: Section 53891, Government Code.

HISTORY

1. New section filed 12–14–72; effective thirtieth day thereafter (Register 72, No. 51).
2. Amendment filed 8–5–76; effective thirtieth day thereafter (Register 76, No. 32).

§ 1031.14. Accounting by District Lessor.

A district, including a joint powers or nonprofit agency required to report as a district under Section 12463.1 of the Government Code, shall account and report leases of assets to others as follows. If the lease is a non–cancellable financing arrangement under which the lessee acquires the facility, the total of the payments due, less interest included, is recorded as a receivable and interest as revenue when earned or received. If the lease is cancellable or no property or other rights of value accrue to the lessee, periodic payments are recorded as revenue.

NOTE: Authority cited: Sections 30200 and 53891, Government Code. Reference: Section 53891, Government Code.

HISTORY

1. New section filed 12–14–72; effective thirtieth day thereafter (Register 72, No. 51).
2. Amendment filed 8–5–76; effective thirtieth day thereafter (Register 76, No. 32).

§ 1032. Exemption Procedure.

Section 53891 of the Government Code provides that districts which substantially follow a system of accounting prescribed by the Public Utilities Commission of the State of California or the Federal Power Commission may be exempted from the uniform accounting and reporting requirements prescribed by the State Controller. Three documents must be submitted:

(1) A resolution of the prescribed form.

(2) A copy of its chart of accounts.

(3) A copy of its most recent independent audit report.

The Controller's Advisory Committee will recommend granting or denying the exemption.

Article 2. Water Utility Districts

§ 1041.1. Application.

The system of accounting herein described shall be used by all California special districts, including conservation–type districts, engaged in the production, sale or distribution of water, except such districts which have been exempted from the requirements pursuant to Section 53891 of the Government Code.

§ 1041.2. Relation to Public Utilities Commission Accounts.

The Uniform System of Accounts of the California Public Utilities Commission is the guide for this system. Accounts have been added and deleted and policies have been modified as deemed necessary to recognize the governmental character of the utility, and to provide for proper recording of transactions peculiar to its operation.

§ 1041.3. Accounting Method and Basis.

The enterprise approach, having as its objective the determination of financial position and the results of operations by fiscal period, is prescribed. Accounts shall be kept by the double–entry method on the accrual basis, with the exception of assessments and ad valorem taxes, for which the accrual basis is optional.

§ 1041.4. Funds.

Funds provided for use of water utility districts are listed in Section 1042. Unless legally required to account for specific resources in separate funds, the district may include them within the General Fund.

§ 1041.5. Current and Long–Term Accounts.

Asset and liability accounts are grouped in current and long–term sections. A current asset is one normally convertible to cash, or a cash equivalent benefit, within twelve months. Other assets are labelled long–term, or a special category of long–term, i.e., deferred charges, etc. Similarly, current liabilities are those which will become due and payable within twelve months.

HISTORY

1. Amendment filed 10–2–69; effective thirtieth day thereafter (Register 69, No. 40).

§ 1041.6. Fixed Assets.

Acquisitions of fixed assets are capitalized in accordance with enterprise accounting practice. Definitions and value and life tests for fixed asset recognition are those presented in Accounting For General Fixed Assets.

§ 1041.7. Nominal Accounts.

Both revenue and expense accounts are segregated between operating and non–operating. The basic classification of revenue is by source. Expense accounts are classified primarily by cost center and secondarily by nature of expense.

§ 1041.8. Subaccounts.

Basic accounts and, in a few cases, certain subaccounts, are required. Districts may segregate detail in as many additional subaccounts as desired. Each subaccount must be keyed to a prescribed account, either by its title or code number.

§ 1041.9. Account Adjustments.

Transactions which correct a previously recorded transaction of the current period are posted directly to the account affected. Recovery of costs from insurance or damage settlements shall be credited against the account charged with the cost of repairing the damage. Provision is also made for the transfer of expense from one segment of the accounts to another without disturbing balances of accounts to which the expenses were initially entered.

§ 1041.10. Transactions Adjusting Prior Balances.

Transactions which adjust nominal account balances of prior fiscal periods are posted to one of two current non–operating accounts, Revenues Applicable To Prior Years or Expenses Applicable To Prior Years.

§ 1041.11. Retirement of Fixed Assets.

When a fixed asset is sold or otherwise retired, cost or recorded value is removed from the property accounts and the accumulated allowance for depreciation or amortization for that asset is removed from the valuation reserve.

Gain or loss, measured by the difference between:

Book value (Cost less accumulated depreciation)	and	Proceeds from sale of asset or salvage
Removal or dismantling costs		Insurance proceeds

is posted to other non–operating revenue or other non–operating expense.

§ 1041.12. Options.

In addition to the options afforded in Sections 1041.4 and 1041.8, the district may exercise an option on the following:

(a) Cash discounts on purchases may be accounted as revenue or as a reduction of purchase price.

(b) After posting employee benefits to the General and Administrative cost centers, they may be reallocated to the other cost centers.

§ 1041.13. Non–Water Activities.

The principal activity of a district is defined as that activity for which the greatest amount of time and money is expended. Districts which are principally water, but which engage also in other activities, must account for the latter in terms of accounts prescribed in other articles.

The accounts

Revenue from Other Activities, and

Expenses of Other Activities

indicate the positions of non–water revenues and expenses. In practice they would act as control accounts for prescribed accounts, or would be replaced by them.

This policy does not extend to balance sheet accounts. Multi–activity districts need maintain only the balance sheet accounts prescribed for the principal activity.

§ 1042. Funds.

The funds listed and defined below are recognized for use by water utility districts.

(a) General. A fund that is available for any authorized purpose and which is therefore used to account for all revenues and all expenditures not provided for in other funds.

(b) Debt Service. A fund used to account for revenues appropriated for the periodic payment of interest, and the principal of matured long–term debt.

(c) Sinking. A fund established by periodic contributions and earnings thereon to provide for retirement of bond principal.

(d) Construction. A fund used to account for the proceeds from the sale of bond issues or other long–term borrowings restricted for capital outlay.

(e) Accumulative Capital Outlay. A fund used to account for the accumulation of revenues restricted for capital outlay under Section 53731 Government Code.

(f) Special Assessment. A fund used to account for assessments levied against certain properties to defray the cost of improvements or services presumed to be of special benefit to the property owners.

(g) Intragovernmental Service. A fund which accounts for services furnished to the district and which is financed primarily by charges for such services.

(h) Trust and Agency. A fund used to account for money or other property received by the district in the capacity of trustee or agent.

HISTORY

1. Amendment of subsection (g) filed 3–8–77; effective thirtieth day thereafter (Register 77, No. 11).

§ 1043.1. Asset and Other Debit Accounts.

(a) Utility plant

Utility plant in service	Construction in progress
Intangible plant	Utility plant held for future use
Land	Allowance for depreciation and amortization of utility plant
Other land rights	Utility plant in service
Water rights	Utility plant held for future use
Source of supply plant	
Pumping plant	
Water treatment plant	
Transmission and distribution plant	
General plant	
Undistributed items	

(b) Investments, restricted assets, other long–term assets

Other physical property	Investments
Non–water utility plant	Contracts and notes receivable
Other property	Allowance for uncollectible accounts
Allowance for depreciation and amortization of other physical property	Restricted assets
Non–water utility plant	
Other property	

(c) Current assets

Cash	Allowance for uncollectible accounts
Cash with fiscal agents	Utility services
Deposits	Merchandise
Imprest cash	Other
Temporary investments	*Taxes receivable
Notes receivable	*Allowance for uncollectible taxes
Accounts receivable	Due from other funds
Utility services	Water in storage
Merchandising	Inventory of materials and supplies
Travel and expense advances	Prepayments
Other	Other current assets

(d) Deferred debits

Preliminary survey and investigation charges	Other work in progress
*Clearing accounts	Other deferred debits
*Stores	
*Transportation	
*Shop	

HISTORY

1. Amendment of subsection (a) filed 10–2–69; effective thirtieth day thereafter (Register 69, No. 40).

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*Optional accounts.

§ 1043.2. Liability and Other Credit Accounts.

(a) Long–term debt

Bonds	Time warrants
Other governmental agencies	Other long–term debt
State	
Federal	
Other	

(b) Current liabilities

Notes payable	Interest payable
Accounts payable	Matured
Current portion of long–term liabilities	Accrued
Matured bonds	Deposits—customers'
Other matured long–term liabilities	Deposits—service connections and meters
Other	Deposits—construction
Due other funds	Taxes accrued
	Other current liabilities

(c) Deferred credits

Advances for construction	Deferred credits

(d) Reserves

Insurance reserves	Other reserves
Employee benefits reserves	

(e) Investment in fixed assets

Investment in utility plant	Investment in other assets
Contributions	Contributions
Other sources	Other sources

(f) Fund balances

General Fund balance	Other fund balances

HISTORY

1. Amendment of subsection (b) filed 10–2–69; effective thirtieth day thereafter (Register 69, No. 40).
2. Amendment of subsection (e) and new subsection (f) filed 9–19–70; effective thirtieth day thereafter (Register 70, No. 38).

§ 1043.3. Revenue Accounts.

(a) Water sales

Residential
Business
Industrial
Irrigation
Sales for resale
Interdepartmental
Other

(b) Water services

Fire prevention
Ground water replenishment
Other

(c) Non–operating

Revenues from lease of other physical property
Interest revenues
Taxes and assessments
Special district augmentation fund
Revenues applicable to prior years
Other governmental agencies:
Federal
State
Homeowners' property tax relief
Business inventory property tax relief
Other
Other
Revenues from other activities

NOTE: Authority and reference cited: Section 53891, Government Code.

HISTORY

1. Amendment of subsection (c) filed 10–2–69; effective thirtieth day thereafter (Register 69, No. 40).
2. Amendment of subsection (c) filed 1–15–80 as an emergency; effective upon filing (Register 80, No. 3). A Certificate of Compliance must be filed within 120 days or emergency language will be repealed on 5–15–80.
3. Certificate of Compliance filed 3–27–80 (Register 80, No. 13).

§ 1043.4. Expense Accounts.

(a) Source of supply

Supervision, labor and expense
Maintenance—structures and improvements
Purchased water
Ground water replenishment

(b) Pumping

Supervision, labor and expense
Maintenance—structures and improvements
Fuel or power purchased for pumping

(c) Water treatment

Supervision, labor, and expense
Maintenance—structures and improvements

(d) Transmission and distribution

Supervision, labor and expense
Maintenance—structure and plant

(e) Customer accounts

Supervision, meter reading and other expenses
Uncollectible accounts

(f) Administrative and general

Salaries
Office supplies and other expenses
Property insurance, injuries and damages
Employees retirement and benefits
Franchise requirements
Rents and leases
Maintenance—general plant
Other

(g) Other operating

Depreciation and amortization
Taxes
Other
Expense credits

(h) Non–operating

Interest on long–term debt
Other interest
Expense applicable to prior years
Other
Expense credits
Expenses of other activities

Article 3. Airport Districts

§ 1051.1. Application.

The system of accounting herein described shall be used by all California special districts engaged in the operation of an airport. If the principal activity of the district is an activity other than airport operation, the operating accounts, only, are mandatory with respect to the airport phase of its operations.

§ 1051.2. Accounting Method and Basis.

The enterprise approach, having as its objective the determination of financial position and the results of operations by fiscal period, is prescribed. Accounts shall be kept by the double–entry method on the accrual basis, with the exception of assessments and ad valorem taxes, for which the accrual basis is optional.

§ 1051.3. Funds.

Funds provided for use of airport districts are listed and defined in Section 1052. Unless legally required to account for specific resources in separate funds, the district may include them within the General Fund.

§ 1051.4. Nominal Accounts.

Revenues are classified by cost or revenue center and by source. Expenses are classified by cost or expense center and by nature of expense.

§ 1051.5. Fixed Assets.

Acquisitions of fixed assets are capitalized in accordance with enterprise accounting practice definitions and value and life tests for fixed asset recognition are those presented in "Accounting for General Fixed Assets."

HISTORY

1. Amendment filed 3–8–77; effective thirtieth day thereafter (Register 77, No. 11).

§ 1051.6. Fixed Assets from Federal Grants.

Fixed assets acquired through grants–in–aid from the federal government shall be capitalized in the same manner as other assets. However, depreciation of such assets is not a charge against operations, but shall be treated as a direct reduction of the FAA grant–in–aid account.

§ 1051.7. Cash Discounts.

Purchase discounts allowed for early payment may be treated as expense reductions or as revenue at the option of the district. Trade discounts are always netted from purchases prior to entry.

§ 1051.8. Current and Long–Term Assets and Liabilities.

Assets and liabilities are segregated in the account chart as current and long–term. Current assets are those which are normally convertible to cash within a twelve–month period. Prepaid expenses have a cash–equivalent value and are included as current. Other assets are long–term.

Similarly, liabilities which will become payable within twelve months are classed as current.

The distinction between long and short–term need not be currently maintained in the accounts. It is sufficient to recognize the transition from long–term to current status on financial statement working papers, without actually making the entries in the books.

§ 1051.9. Interest During Construction Period.

Interest expense during the construction period on money borrowed to finance the construction shall be capitalized. When large projects are undertaken in stages, a completed component may be usable before the total project is finished. If so, the construction period ends for that unit when it is placed into service.

§ 1051.10. Account Adjustments.

Transactions which correct a previously recorded transaction of the current period are posted directly to the account affected. Recovery of costs from insurance or damage settlements shall be credited against the account charged with the costs.

§ 1051.11. Transactions Adjusting Prior Balances.

Transactions which adjust nominal account balances of prior fiscal periods are posted to one of two current accounts, Revenues Applicable To Prior Years or Expenses Applicable To Prior Years.

§ 1051.12. Investments.

Investments are shown on the balance sheet at book value—maturity value, adjusted for any unamortized premium or discount.

§ 1051.13. Disposition of Fixed Assets.

When fixed assets are sold or otherwise disposed of, the gain or loss, measured by the difference between book value and selling price, is included as a charge or credit to current operations.

§ 1052. Funds.

The following classes of funds are recognized for use by airport districts.

(a) General. A fund that is available for any authorized purpose and which is therefore used to account for all revenues and all expenditures not provided for in other funds.

(b) Debt Service. A fund used to account for revenues appropriated for the periodic payment of interest, and the principal of matured long-term debt.

(c) Construction. A fund used to account for the proceeds from the sale of bond issues or other long-term borrowings restricted for capital outlay.

(d) Capital Outlay. A fund used to account for the accumulation of revenues restricted for capital outlay under Section 53731, Government Code, or the organic law of the district.

(e) Special Aviation. The fund used to account for aviation fuel taxes apportioned to the district under Section 21682 of the Public Utilities Code and their expenditure for authorized aviation purposes.

(f) Intragovernmental Service. A fund which accounts for services furnished to the district and which is financed primarily by charges for such services.

(g) Special Assessment. A fund used to account for assessments levied against certain properties to defray the cost of improvements or services presumed to be of special benefit to the property owners.

(h) Trust and Agency. A fund used to account for money or other property received by the district in the capacity of trustee or agent.

HISTORY

1. Amendment of subsection (f) filed 3-8-77; effective thirtieth day thereafter (Register 77, No. 11).

§ 1053.1. Asset and Other Debit Accounts.

(a) Current assets

Cash
Cash with fiscal agents
Notes receivable
Accounts receivable
Allowance for doubtful accounts
* Taxes receivable
* Allowance for uncollectible taxes
Due from other funds
Deposits
Interest receivable
Inventories
Investments
Unamortized discount on investments
Unamortized premium on investments
Prepaid expenses

(b) Property, plant and equipment

Land
Land rights
Land improvements
Buildings and structures
Equipment
Construction in progress
Allowance for depreciation and amortization

(c) Restricted and other long-term assets

Advances and loans receivable
Restricted assets

(d) Deferred charges

Unamortized bond discount and expense
Other

(e) Suspense

Suspense accounts

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*Optional accounts.

§ 1053.2. Liability and Other Credit Accounts.

(a) Current liabilities

Notes payable
Accounts payable
Matured and maturing long-term debt
Accrued interest
Payroll liabilities
Other accrued taxes
Deposits
Other

(b) Long-term liabilities

Bonds payable
Notes and contracts payable

(c) Deferred credits

Prepaid income
Other

(d) Grants-in-aid

FAA grants-in-aid
Write-down through depreciation

(e) Reserves

Reserves for restricted assets
Other

(f) Investment in fixed assets

Investment in property, plant and equipment

(g) Fund balances

General Fund balance
Other fund balances

HISTORY

1. Amendment of subsection (f) and new subsection (g) filed 9-16-70; effective thirtieth day thereafter (Register 70, No. 38).

§ 1053.3. Activity Centers.

Revenues and expenses shall be identified with the following activity centers:

Landing area
Terminal buildings and areas
Other buildings and areas
Non-aviation activities
Administration
General shop and equipment
Non-operating

§ 1053.4. Revenue Accounts.

Landing fees
Aircraft storage fees
Fuel flowage fees
Concessions
Interest
Rents and leases
Sale of surplus property
Sales
Revenue applicable to prior years
Other
Grants-in-aid
Federal
State-Homeowners' property tax relief
State-Business inventory property tax relief
Other
Taxes
Special district augmentation fund

NOTE: Authority and reference cited: Section 53891, Government Code.

HISTORY

1. Amendment filed 9-16-70; effective thirtieth day thereafter (Register 70, No. 38).
2. Amendment filed 1-15-80 as an emergency; effective upon filing (Register 80, No. 3). A Certificate of Compliance must be filed within 120 days or emergency language will be repealed on 5-15-80.
3. Certificate of Compliance filed 3-27-80 (Register 80, No. 13).

§ 1053.5. Expense Accounts.

Salaries and wages
Payroll burden
Purchases for resale
Advertising and promotion
Bad debt expense
Communications
Depreciation and amortization
Dues and subscriptions
Education
Elections
Insurance
Interest
Judgments and damages
Office expense
Operating supplies
Professional services
Outside services
Rents and leases
Repairs and maintenance
Taxes and assessments
Travel
Utilities
Expenses applicable to prior years
Other
Allocated expenses

Article 4. Harbor and Port Districts

§ 1061.1. Application.

The system of accounting herein described shall be used by all California special districts engaged in the operation of a harbor or port. If the principal activity of the district is some other activity, the operating accounts, only, are mandatory with respect to the harbor or port phase of its operations.

§ 1061.2. Accounting Method and Basis.

The enterprise approach having as its objective the determination of financial position and the results of operations by fiscal period, is prescribed. Accounts shall be kept by the double-entry method on the accrual basis, with the exception of assessments and ad valorem taxes, for which the accrual basis is optional.

§ 1061.3. Funds.

Funds provided for use of harbor and port districts are listed and defined in Section 1062. Unless legally required to account for specific resources in separate funds, the district may include them within the General Fund.

§ 1061.4. Nominal Accounts.

Revenues are classified by revenue center and by source. Expenses are classified by expense center and by nature of expense.

§ 1061.5. Fixed Assets.

Acquisitions of fixed assets are capitalized in accordance with enterprise accounting practice. Definitions and value and life tests for fixed as-

set recognition are those presented in "Accounting for General Fixed Assets."

HISTORY

1. Amendment filed 3–8–77; effective thirtieth day thereafter (Register 77, No. 11).

§ 1061.6. Disposition of Fixed Assets.

When fixed assets are sold or disposed of otherwise, their recorded value is removed from the property accounts and the valuation reserve is reduced by the accumulated allowances for depreciation and amortization for those assets.

Gain or loss, measured by the difference between:

Book value (Cost less accumulated depreciation)	and	Proceeds from sale or salvage
Costs of removal or dismantling		Insurance proceeds

is credited or charged to current operations.

§ 1061.7. Cash Discounts.

Purchase discounts allowed for early payment may be treated as expense reductions or as revenue, at the option of the district. Trade discounts are always netted from the purchase price before recording.

§ 1061.8. Current and Long–Term Assets.

Assets and liabilities have been grouped as current and long–term. A current asset is one normally convertible to cash, or a cash–equivalent benefit, within twelve months. Other assets are labelled long–term, or some special category of long–term, i.e., Deferred Charges, etc. Similarly, current liabilities are those which will become due and payable within twelve months.

Status of the asset at date of acquisition, or liability at time of incurrence, governs the account to which posted. However, except for matured bonds payable it is not intended that the accounts be subsequently adjusted for each transition from long–term to current. Balance sheets should reflect correct status at the statement date, but reclassification entries need not be posted to the accounts.

§ 1061.9. Interest During Construction Period.

Interest expense during the construction period on money borrowed to finance the construction shall be capitalized. When large projects are undertaken in stages, a completed component may be usable before the total project is finished. If so, the construction period ends for that unit when it is placed in service.

§ 1061.10. Account Adjustments.

Transactions which correct a previously recorded transaction of the current period are posted directly to the account affected. Recovery of costs from insurance or damage settlements shall be credited against the account charged with costs of repairing the damage. If desired, such costs and recoveries may be initially collected in clearing accounts, and the difference subsequently posted to the operating accounts.

§ 1061.11. Transactions Adjusting Prior Balances.

Transactions which adjust nominal account balances of prior fiscal period are posted to one of two current accounts, Revenues Applicable To Prior Years or Expenses Applicable To Prior Years.

§ 1061.12. Investments.

Investments are shown on the balance sheet at book value—maturity value, adjusted for any unamortized premium or discount.

§ 1061.13. Bond Premium, Discount and Expense.

Discount and expense on bonds issued may be charged against operations in the year of issue, or may be amortized over the life of the bonds. Bond premium is also subject to optional treatment.

Accrued interest received on the sale of bonds is credited to the interest expense account.

§ 1062. Standard Funds.

The following classes of funds are recognized for use in harbor and port districts:

(a) General. A fund that is available for any authorized purpose and which is therefore used to account for all revenues and all expenditures not provided for in other funds.

(b) Debt Service. A fund used to account for revenues appropriated for the periodic payment of interest, and the principal of matured long–term debt.

(c) Sinking. A fund established by periodic contributions and earnings thereon to provide for retirement of bond principal.

(d) Construction. A fund used to account for the proceeds from the sale of bond issues, governmental grants or other long–term borrowings restricted for capital outlay.

(e) Capital Outlay. A fund used to account for the accumulation of revenues restricted for capital outlay under the organic law of the district or Section 53731, Government Code.

(f) Special Assessment. A fund used to account for assessments levied against certain properties to defray the cost of improvements or services presumed to be of special benefit to the property owners.

(g) Intragovernmental Service. A fund which accounts for services furnished to the district and which is financed primarily by charges for such services.

(h) Trust and Agency. A fund used to account for money or other property received by the district in the capacity of trustee or agent.

HISTORY

1. Amendment of subsection (g) filed 3–8–77; effective thirtieth day thereafter (Register 77, No. 11).

§ 1063.1. Asset and Other Debit Accounts.

(a) Current assets

Cash	Due from other funds
Cash with fiscal agents	Deposits
Notes receivable	Inventories
Accounts receivable	Investments
Allowance for uncollectible accounts	Unamortized discount—investments
*Taxes receivable	Unamortized premium—investments
* Allowance for uncollectible taxes	Prepaid expenses
Interest receivable	

(b) Property, plant and equipment accounts

Land	Construction in progress
Other land rights	Allowance for depreciation and amortization
Structures and improvements	
Equipment	

(c) Restricted assets

Restricted assets

(d) Deferred charges

Unamortized bond discount and expense	Suspense accounts
	Other deferred charges

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* Optional accounts.

§ 1063.2. Liability and Other Credit Accounts.

(a) Current liabilities

Notes payable	Matured interest
Accounts payable	Accrued interest payable
Due other funds	Deposits
Matured and maturing long–term debt	Payroll liabilities
	Other current liabilities

(b) Long–term liabilities

General obligation bonds	Other notes and loans payable
Revenue bonds	Other contractual obligations
Due State of California	

(c) Deferred credits

Deferred income	Other deferred credits
Unamortized bond premium	

(d) Reserves

Reserve for restricted assets	Other reserves

(e) Investment in fixed assets

Investment in property, plant and equipment

(f) Fund balances

General Fund balance	Other fund balances

HISTORY

1. Amendment of subsection (e) and new subsection (f) filed 9–16–70; effective thirtieth day thereafter (Register 70, No. 38).

§ 1063.3. Revenue Centers.

Districts operating a marine terminal shall segregate revenues between Marine and Non–Operating. Those operating a small craft harbor shall segregate revenues between Harbor and Non–Operating.

§ 1063.4. Revenue Accounts.

Revenue accounts to be used as needed within each revenue center

(a) Marine

Dockage
Wharfage
Storage, demurrage and space rental
Loading and unloading
Service charges—bulkloader
Service charges—cargo
Stevedoring
Other sales and services

(b) Harbor

Slip rentals
Launching charges
Fuel sales
Rents and concessions
Other sales and services

(c) Non–Operating

Interest
Gain on sale of capital assets
Revenue from other activities
Taxes and assessments
Special district augmentation fund
Other governmental agencies:
Federal
State
Homeowners' property tax relief
Business inventory property tax relief
Other
Other

NOTE: Authority and reference cited: Section 53891, Government Code.

HISTORY

1. Amendment of subsection (c) filed 9–16–70; effective thirtieth day hereafter (Register 70, No. 38).
2. Amendment of subsection (c) filed 1–15–80 as an emergency; effective upon filing (Register 80, No. 3). A Certificate of Compliance must be filed within 120 days or emergency language will be repealed on 5–15–80.
3. Certificate of Compliance filed 3–27–80 (Register 80, No. 13).

§ 1063.5. Expense Centers.

Expenses shall be identified with the following expense centers:

Operating and Security
Maintenance
Administration and General
Depreciation
Non–Operating

§ 1063.6. Expense Accounts.

Objects of expense to be used as needed within each expense center are:

(a) Operating and security, maintenance and administration and general

Salaries and wages
Payroll burden
Cost of sales
Advertising and promotion
Auto mileage
Bad debt expense
Communications
Conferences and meetings
Dues and subscriptions
Elections
Insurance
Motive equipment expense
Office expense
Operating supplies
Outside services
Professional services
Rents and leases
Repairs and maintenance
Small tools
Utilities
Allocated expenses

(b) Depreciation

Depreciation and amortization

(c) Non–Operating

Interest
Judgments and damages
Loss on sale of capital assets
Expenses of other activities
Taxes and assessments
Other

Article 5. Transit Districts

§ 1071.1. Application.

The system of accounting herein described shall be used by all public agencies engaged in the operation of a public transit system in the State of California, hereinafter referred to as operator. This includes a California City, a California County, a California Special District, and a public entity, agency, board, etc. as defined in Government Code Section 12463.1.

The system is prescribed to comply with Government Code Section 53891 and Public Utilities Code Section 99243.

NOTE: Authority cited: Section 53891, Government Code. Reference: Section 99243, Public Utilities Code; Section 53891, Government Code.

HISTORY

1. Repealer of Article 5 (Sections 1071.1–1073.4, not consecutive) and new Article 5 (Sections 1071.1–1073.7, not consecutive) filed 6–28–78; designated effective 7–1–78 per Section 99243, Public Utilities Code (Register 78, No. 26). For history of former Article 5, see Registers 67, No. 49; 70, No. 38; and 77, No. 11.

§ 1071.2. Accounting Method and Basis.

The enterprise approach, having as its objective the determination of financial position and the results of operations by fiscal period, is prescribed. Accounts shall be kept by the double–entry method on the accrual basis, with the exception of assessments and ad valorem taxes, for which the accrual basis is optional.

§ 1071.3. Funds.

It is recommended that, unless the district is legally required to account for specific resources in separate funds, all accounting be done in one fund. In the event additional funds are required, they should be classified according to the standard list in Section 1072.

While the fund is a separate fiscal and accounting entity, separate bank accounts should not be established unless legally required.

Operators providing charter or handicapped and elderly services should maintain records of operation for each of these services to facilitate determining operating ratios for state subvention purposes.

NOTE: Authority and reference cited: Section 53891, Government Code and Section 99243, Public Utilities Code.

HISTORY

1. Amendment filed 8–12–80; effective thirtieth day thereafter (Register 80, No. 33).

§ 1071.4. Current and Long–Term Accounts.

Asset and liability accounts are grouped in current and long–term sections. A current asset is one normally convertible to cash, or a cash–equivalent benefit, within one year. Other assets are considered long–term. Similarly, current liabilities are those which will become due and payable within one year.

Status of the asset at the date of acquisition, or liability at time of incurrence, determines whether the item is posted to a current or long–term account. Changes in status due to the passage of time should be reflected on the balance sheet, but need not be posted to the accounts.

§ 1071.5. Governmental Grants.

Grants, subventions, and Provisions from the Local, State, or Federal Government for operating assistance, the acquisition of equipment, or other capital outlay should not be formally recognized in the accounts until the grant becomes a valid receivable as a result of complying with appropriate grant requirements. Usual steps attending such grants are:

(1) Application by grantee.

(2) Acceptance and approval by grantor.

(3) Requisition for all or part of grant by grantee.

(4) Notice of approval of requisition by grantor or receipt of check by grantee.

Upon completion of Step (3), the amount requisitioned should be charged to a Receivable and credited to the applicable account in the revenue section.

Memo records should be started for each grant not later than the date of the grant application. These records should be maintained on a current basis and reviewed before the books are closed at the end of the fiscal year to ascertain that all requisitions have been mailed and the receivable and revenue recorded.

When all transactions for the year ended have been recorded, the Capital Outlay revenues are closed into the corresponding grant equity ac-

counts in the Capital group. Equipment acquired from this source is recorded in account Tangible Transit Operating Property Acquired by Grant or with Grant Funds, and is accounted for and depreciated in the same manner as other equipment.

§ 1071.6. Fixed Assets.

Fixed assets shall be capitalized and their cost periodically charged against operations in the form of depreciation or amortization. The tests for distinguishing between capital costs and operating charges are found in the Controller's publication, Accounting for General Fixed Assets. At its option the operator may lower these standards, but may not raise them.

Depreciation on assets acquired with grant funds should be recorded in the appropriate depreciation expense account. Net income will reflect such depreciation. However, the account will be transferred to the related capital contribution account reflecting the proper equity within the contribution account.

NOTE: Authority and reference cited: Section 53891, Government Code and Section 99243, Public Utilities Code.

HISTORY

1. Amendment filed 8–12–80; effective thirtieth day thereafter (Register 80, No. 33).

§ 1071.7. Interest During Construction.

Interest during the construction period on money borrowed to finance the construction shall be capitalized. However, should circumstances in an individual case justify a different recognition, this departure must be footnoted on the balance sheet. No recognition shall be given to imputed interest.

Income from use of the facility during its construction period is accounted as a decrease in the cost of construction.

§ 1071.8. Retirement of Fixed Assets.

Accounting for fixed assets sold or otherwise retired will depend upon the method of depreciation employed. For assets with individual cost and depreciation records, cost or recorded value is removed from the property accounts and the accumulated allowance for depreciation or amortization from the valuation reserve. Gain or loss, measured by the difference between:

Book value (Cost less accumulated depreciation)	and	Proceeds from sale or salvage
Removal or dismantling costs		Insurance proceeds

is posted to depreciation accounts as applicable.

§ 1071.9. Nominal Accounts.

Revenue and expense accounts are not segregated between operating and non–operating. Revenues are classified by source. Expenses are classified primarily by system mode and secondarily by function and thirdly by object of expenditure. These accounts are listed in Sections 1073.1, 1073.2, 1073.3, 1073.4, 1073.7 and 1073.8. Budgetary accounts are provided but such accounting is not recommended unless legally required.

§ 1071.10. Subaccounts.

Basic accounts listed in Sections 1073.1–1073.4 represent minimum accounting and reporting classifications. Within these classifications districts may account in as much detail as desired through subaccounts. Each subaccount must be keyed to a prescribed account, either by title or code number.

This system is fully compatible with the Section 15 reporting requirements of the Urban Mass Transportation Agency and may be expanded to any level of that system.

§ 1071.11. Account Numbers.

In the Controller's accounting manual, code numbers are shown for each account and fund primarily for reference purposes. While the numbers are considered appropriate and may be used, each operator is free to devise a coding system suitable to its individual needs. Account titles, however, are required.

§ 1071.12. Purchased or Contracted Service.

Transit service claimants contracting for transportation service and receiving Transportation Development Act Funds to pay for such service, shall include in "operating costs" and "fare revenues" the amount of fare revenues that are received by the entity providing the service and not transferred to the claimant. This will ensure the claimant has included all costs and revenues when determining operating ratios for state subvention purposes.

NOTE: Authority and reference cited: Section 53891, Government Code; Section 99243, Public Utilities Code.

HISTORY

1. New section filed 8–12–80; effective thirtieth day thereafter (Register 80, No. 33).

§ 1072. Standard Funds.

By definition the General Fund is created to account for all transactions of the operator, and, except as noted below, should be so used. It is defined as: A fund that is available for any authorized purpose and which is therefore used to account for all revenues and all expenditures not provided for in other funds.

If bond indentures, State law, governmental grant requirements, contractual agreements or action of the governing body require separate funds for restricted resources, the following classes of funds are recognized:

(a) Special Revenue. A fund used to finance particular activities from the receipts of specific taxes or other revenues.

(b) Debt Service. A fund used to account for revenues appropriated for the periodic payment of interest, and the principal of matured long–term debt.

(c) Sinking. A fund established by periodic contributions and earnings thereon to provide for retirement of bond principal.

(d) Capital Projects. A fund used to account for the proceeds from the sale of bond issues or other long–term borrowings restricted for capital outlay.

(e) Accumulative Capital Outlay. A fund used to account for the accumulation of revenues restricted for capital outlay under Section 53731, Government Code.

(f) Special Assessment. A fund used to account for assessments levied against certain properties to defray the cost of improvements or services presumed to be of special benefit to the property owners.

(g) Internal Service. A fund which accounts for services furnished by the operator and which is financed primarily by charges for such services.

(h) Trust and Agency. A fund used to account for money or other property received by the operator in the capacity of trustee or agent.

NOTE: Authority and reference cited: Section 53891, Government Code and Section 99243, Public Utilities Code.

HISTORY

1. Amendment filed 8–12–80; effective thirtieth day thereafter (Register 80, No. 33).

§ 1073.1. Assets.

(a) Current Assets
- Cash and cash items
- Receivables
- Materials and supplies inventory
- Other current assets

(b) Tangible and Intangible Assets
- Work in Process
- Tangible Transit Operating Property
  - Tangible Transit Operating Property Acquired with Operator Funds
  - Tangible Transit Operating Property Acquired by Federal, State, or Transportation Development Act Funds
- Accumulated Depreciation
  - Accumulated Depreciation of Tangible Transit Operating Property Acquired With Operator Funds
  - Accumulated Depreciation of Tangible Transit Operating Property Acquired by Federal, State, or Transportation Development Act Funds
- Tangible Property Other Than for Transit Operations
- Accumulated Depreciation of Tangible Property Other Than for Transit Operations
- Intangible Assets
- Accumulated Amortization

(c) Investments and Other Long–Term Assets

Investments
Special funds
Other assets

§ 1073.2. Liabilities and Capital.

(a) Current Liabilities
Trade Payables
Accrued Payroll Liabilities
Accrued Tax Liabilities
Short–Term Debt
Other Current Liabilities
(b) Long–Term Liabilities
Advances Payable
Long–Term Debt
(c) Estimated Liabilities and Deferred Credits
Estimated Liabilities
Deferred Credits
(d) Public Equity
Public (Governmental) Entity Ownership
(e) Grant Equity
Grants, Donations and Other Paid–In Capital
Federal Capital Grants
UMTA Section 3 Grants
UMTA Section 5 Grants
Federal Aid Urban Grants
Federal Interstate Grants
Other Federal Grants
Revenue Sharing
Depreciation Expense Accumulated
State Capital Grants and Subventions
Article XIX Guideway Funds
General Fund Provisions
State Transit Assistance Fund
Transportation Planning and Development (TP&D) Guideway Fund (P.U.C. 99316)
Other State Provisions
Depreciation Expense Accumulated
Local Capital Grants and Provisions
Sales Taxes
Motor Vehicle Fuel Tax
Property Taxes
Transportation Development Act 1/4 cents Sales
General Fund
Other Local Provisions
Local Article XIX Guideway Funds
Depreciation Expense Accumulated
Non–Governmental Donations and Other Paid–In Capital
Depreciation Expense Accumulated
(f) Earnings or Losses
Accumulated Earnings (Losses)
Accumulated Earnings—Unrestricted
Accumulated Earnings—Restricted

NOTE: Authority and reference cited: Section 53891, Government Code and Section 99243, Public Utilities Code.

HISTORY

1. Amendment of subsection (e) filed 8–12–80; effective thirtieth day thereafter (Register 80, No. 33).

§ 1073.3. Revenue Accounts.

(a) Operating
Passenger Fares For Transit Service
Special Transit Fares
School Bus Service Revenues
Freight Tariffs
Charter Service Revenues
Auxiliary Transportation Revenues
Nontransportation Revenues
Taxes Levied Directly by Transit System
Property Tax Revenue
Sales Tax Revenue
Special District Augmentation Fund
Local Cash Grants and Reimbursements
General Operating Assistance
Transportation Development Act 1/4 cents Sales Tax
Motor Vehicle Fuel Tax
Local Article XIX Guideway Funds
Local Special Fare Assistance
State Cash Grants and Reimbursements
Homeowner's, Property Tax Relief
Business Inventory Property Tax Relief
Article XIX Guideway Funds
State Transit Assistance Fund
Transportation Planning and Development (TP&D) Guideway Fund (P.U.C. 99316)
Other State Provisions and Grants
State Special Fare Assistance
Federal Cash Grants and Reimbursements
General Operating Assistance—UMTA Sec. 5
Special Demonstration Project Assistance
Other Financial Assistance
Revenue Sharing Pass Through (Federal from local sources)
Comprehensive Employment Training Act (CETA)
Contributed Services
State and Local Government
Contra Account for Expense
Subsidy From Other Sectors of Operations
(b) Capital Grants, Subventions, and Provisions
Federal Capital Grants
UMTA Section 3 Grants
UMTA Section 5 Grants
Federal Aid Urban Grants
Federal Interstate Grants
Other Federal Grants
Revenue Sharing (Federal from local sources)
State Capital Grants and Subventions
Article XIX Guideway Funds
General Fund Provisions
State Transit Assistance Fund
Transportation Planning and Development (TP&D) Guideway Funds (P.U.C. 99316)
Other State Provisions and Grants
Local Capital Provisions
Sales Taxes
Motor Vehicle Fuel Tax
Property Taxes
Transportation Development Act 1/4 cents Sales Tax
General Fund
Other Local Provisions
Local Article XIX Guideway Funds
Non–Governmental Donations

NOTE: Authority and reference cited: Section 53891, Government Code and Section 99243, Public Utilities Code.

HISTORY

1. Amendment of subsection (a) filed 1–15–80 as an emergency; effective upon filing (Register 80, No. 3). A Certificate of Compliance must be filed within 120 days or emergency language will be repealed on 5–15–80.
2. Certificate of Compliance filed 3–27–80 (Register 80, No. 13).
3. Amendment filed 8–12–80; effective thirtieth day thereafter (Register 80, No. 33).

§ 1073.4. Expense Accounts.

(a) Operating Functions
Operations
Vehicle Maintenance
Non–Vehicle Maintenance
General Administration
(b) **Expense Objects
Labor
Operators Salaries and Wages
Other Salaries and Wages
Fringe Benefits
Services
Materials and Supplies Consumed
Fuels and Lubricants
Tires and Tubes
Other Materials and Supplies
Utilities
Casualty and Liability Costs
Taxes
Purchased Transportation Service
Miscellaneous Expenses
Expense Transfers
Interest Expense
Leases and Rentals
Depreciation and Amortization
Depreciation and Amortization—Property Acquired With District (Operator) Funds
Depreciation and Amortization—Property Acquired With Grant Funds

NOTE: Authority and reference: Section 53891, Government Code and Section 99243, Public Utilities Code.

HISTORY

1. Amendment of subsection (a) filed 8–12–80; effective thirtieth day thereafter (Register 80, No. 33).

**To be used as needed within each expense operating function.

§ 1073.5. Prior Year Adjustments.

Revenues and expenses applicable to prior years will be recorded in the proper account for the current year.

§ 1073.6. Service Modes.

Transit systems are initially classified according to the mode or modes of transit service provided. Data collection and reporting, transit property, expense and nonfinancial operating information is segregated by mode. The modes recognized in the systems described herein are defined below. A multi-mode transit system is one operating two or more of these modes:

(a) Rail Rapid Transit: High-speed, passenger rail cars operating singly or in trains of two or more cars on fixed rails in separate rights-of-way from which all other vehicular and foot traffic is excluded. The tracks may be located in underground tunnels, on elevated structures, in open cut or at surface level. There are very few, if any, crossings of streets and roads at track level, and rail traffic has the right-of-way at such intersections. The cars are driven electrically with the power being drawn from an overhead electric line or from an electrified third rail.

(b) Light Rail—Streetcar: Passenger rail cars operating singly (or in short, usually two-car, trains) on fixed rails in right-of-way that is not separated from other traffic for much of the way. Streetcars do not necessarily have the right-of-way at-grade crossings with other traffic. Streetcars are driven electrically with the power being drawn from an overhead electric line via a trolley or a pantograph.

(c) Trolleybus: Rubber-tired passenger vehicles operating singly on city streets. These buses are driven electrically with the power being drawn from an overhead electric line via trolleys.

(d) Motor Bus: Rubber-tired passenger vehicles operating singly on city streets. These buses are powered by fuel contained within the bus; they are, therefore, not restricted to operating on a fixed route.

(e) Demand Response: Rubber-tired passenger vehicles operated on city streets, propelled by gas, gasoline or diesel engines equipped to provide personal demand transit service, normally upon dispatch, and used exclusively for this service.

(f) Ferryboat: A vessel for carrying passengers and/or vehicles over a body of water. The vessels are generally steam or diesel-powered conventional ferry vessels. They may also be hovercraft, hydrofoil and other high-speed vessels.

(g) Other: Other modes of transit service such as cable cars, personal rapid transit systems of varying designs, monorails, incline railways, etc., not covered in the above categories.

NOTE: Authority and reference cited: Section 53891, Government Code and Section 99243, Public Utilities Code.

HISTORY

1. Amendment filed 8-12-80; effective thirtieth day thereafter (Register 80, No. 33).

§ 1073.7. Expense Functions.

The expense functions shown are required for each operating mode:

(a) Operations: This function pertains to all activities relating to carrying of passengers including dispatching of buses or trains; passenger census for scheduling purposes, supervision of drivers, scheduling of drivers and vehicles and the direct supervision of operations activities.

(b) Vehicle Maintenance: This function pertains to the maintenance and repair of vehicles, including revenue, service and maintenance administration vehicles.

(c) Non-Vehicle Maintenance: This function pertains to the maintenance and repairs of equipment, buildings and facilities related to the transit system including tracks, tunnels, bridges, subways, maintenance and administrative buildings, etc.

NOTE: Authority and reference cited: Section 53891, Government Code and Section 99243, Public Utilities Code.

HISTORY

1. Amendment filed 8-12-80; effective thirtieth day thereafter (Register 80, No. 33).

Article 6. Hospital Districts

§ 1081. Prescribed Accounting System.

All California special districts engaged in the operation of a hospital shall use the accounting system prescribed by the California Health Facilities Commission.

HISTORY

1. Amendment filed 3-8-77; effective thirtieth day thereafter (Register 77, No. 11).

Article 7. Electric Utility Districts

§ 1091.1. Application.

The system of accounting herein described shall be used by all California special districts engaged in the production, sale or distribution of electric power, except such districts which have been exempted from the requirements pursuant to Section 53891 of the Government Code.

NOTE: Authority cited for Article 7, Section 53891, Government Code.

HISTORY

1. New Article 7 (§§1091.1-1091.13, 1092, 1093.1-1093.4) filed 9-23-68; designated effective 7-1-69 (Register 68, No. 36).

§ 1091.2. Relation to Federal Power Commission Accounts.

The Uniform System of Accounts of the Federal Power Commission is the guide for this system. Accounts have been added and deleted and policies have been modified as deemed necessary to recognize the governmental character of the utility, and to provide for proper recording of transactions peculiar to its operation.

§ 1091.3. Accounting Method and Basis.

The enterprise approach, having as its objective the determination of financial position and the results of operations by fiscal period, is prescribed. Accounts shall be kept by the double entry method on the accrual basis, with the exception of assessments and ad valorem taxes, for which the accrual basis is optional.

§ 1091.4. Funds.

Funds provided for use of electric utility districts are listed and defined in Section 1092. Unless legally required to account for specific resources in separate funds, the district may include them within the General Fund.

§ 1091.5. Current and Long-Term Accounts.

Asset and liability accounts are grouped in current and long-term sections. A current asset is one normally convertible to cash, or a cash-equivalent benefit, within twelve months. Other assets are labeled long-term, or some special category of long-term, i.e., Deferred Charges, etc. Similarly, current liabilities are those which will become due and payable within twelve months.

Status of the asset at date of acquisition, or liability at time of incurrence, governs the account to which posted. However, it is not intended that the accounts be subsequently adjusted for transitions from long-term to current. Balance sheets should reflect the correct status as of the date of the statement, but reclassification entries need not formally be posted to the accounts.

§ 1091.6. Fixed Assets.

Acquisitions of fixed assets are capitalized in accordance with enterprise accounting practice. Definitions and value and life tests for fixed asset recognition are those presented in Accounting for General Fixed Assets.

§ 1091.7. Nominal Accounts.

Both revenue and expense accounts are segregated between operating and non-operating. The basic classification of revenue is by source. Expense accounts are classified primarily by cost center and secondarily by nature of expense. These accounts are listed and explained in Sections 1093.3 and 1093.4, respectively.

§ 1091.8. Subaccounts.

Basic accounts and, in a few cases, certain subaccounts, are required. Districts may segregate detail in as many additional subaccounts as desired. Each subaccount must be keyed to a prescribed account, either by its title or code number.

§ 1091.9. Account Adjustments.

Transactions which correct a previously recorded transaction of the current period are posted directly to the account affected. Recovery of costs from insurance or damage settlements shall be credited against the account charged with the cost of repairing the damage. Provision is also made for the transfer of expense from one segment of the accounts to another without disturbing balances of accounts to which the expenses were initially entered.

§ 1091.10. Transactions Adjusting Prior Balances.

Transactions which adjust nominal account balances of prior fiscal periods are posted to one of two current non–operating accounts, Revenues Applicable to Prior Years or Expenses Applicable to Prior Years.

§ 1091.11. Retirement of Fixed Assets.

When a fixed asset is sold or otherwise retired, cost or recorded value is removed from the property accounts. Except in the case of a non–depreciable asset or an entire property having a separately–identified depreciation allowance, gain or loss is not recognized. Rather, the allowance for depreciation account is charged for the difference between:

Recorded cost of the asset		Proceeds from sale of
Removal or dismantling costs	and	asset or salvage Insurance proceeds

In exceptional cases where gain or loss is recognized, it is credited or charged to non–operating revenue or expense.

§ 1091.12. Options.

In addition to the options afforded in 1091.3 and 1091.8, the district may exercise an option on the following:

(a) Cash discounts on purchases may be accounted as revenue or as a reduction of purchase price.

(b) After posting employee benefits to the General and Administrative cost centers, they may be reallocated to the other cost centers.

§ 1091.13. Non–Electric Activities.

The principal activity of a district is that activity for which the greatest amount of time and money is expended. Districts which are principally electric, but which engage also in other activities, must account for the latter in terms of accounts prescribed in other Articles of this Subchapter. The accounts

Revenues from other activities, and
Expenses of other activities

indicate the positions of non–electric revenues and expenses. They may serve as control accounts for prescribed accounts, or may be replaced by them. This policy does not extend to balance sheet accounts. Multi–activity districts need maintain only the balance sheet accounts prescribed for the principal activity.

§ 1092. Standard Funds.

The funds listed and defined below are recognized for use by electric utility districts.

(a) General. A fund that is available for any authorized purpose and which is therefore used to account for all revenues and all expenditures not provided for in other funds.

(b) Debt Service. A fund used to account for revenues appropriated for the periodic payment of interest, and the principal of matured long–term debt.

(c) Sinking. A fund established by periodic contributions and earnings thereon to provide for retirement of bond principal.

(d) Construction. A fund used to account for the proceeds from the sale of bond issues or other long–term borrowings restricted for capital outlay.

(e) Accumulative Capital Outlay. A fund used to account for the accumulation of revenues restricted for capital outlay under Section 53731, Government Code

(f) Special Assessment. A fund used to account for assessments levied against certain properties to defray the cost of improvements or services presumed to be of special benefit to the property owner.

(g) Intragovernmental Service. A fund which accounts for services furnished to the district and which is financed primarily by charges for such services.

(h) Trust and Agency. A fund used to account for money or other property received by the district in the capacity of trustee or agent.

HISTORY

1. Amendment of subsection (g) filed 3–8–77; effective thirtieth day thereafter (Register 77, No. 11).

§ 1093.1. Asset and Other Debit Accounts.

(a) Electric plant accounts

Electric plant in service:
- Intangible plant
- Land
- Other land rights
- Production
- Transmission
- Distribution
- General plant
- Undistributed items

Construction in progress
Electric plant held for future use
Allowance for depreciation and amortization of electric plant:
- Electric plant in service
- Electric plant held for future use

(b) Investments, restricted assets, other long–term assets

Other physical property:
- Non–electric utility plant
- Other property

Allowance for depreciation and amortization of other physical property:
- Non–electric utility plant

Other property
Investments
Contracts and notes receivable
Allowance for uncollectible accounts
Restricted assets

(c) Current assets

Cash
Cash with fiscal agents
Deposits
Imprest cash
Temporary investments
Notes receivable
Accounts receivable:
- Utility services
- Merchandising
- Travel and expense advances

Other

Allowance for uncollectible accounts:
- Utility services
- Merchandise
- Other

*Taxes receivable
*Allowance for uncollectible taxes
Due from other funds
Inventory of materials and supplies
Prepayments
Other current assets

(d) Deferred debits

Preliminary survey and investigation charges
*Clearing accounts:
- Stores
- Transportation
- Shop

Other work in progress
Other deferred debits

*Optional accounts.

§ 1093.2. Liability and Other Credit Accounts.

(a) Long–term debt

Bonds
Other governmental agencies:
- State
- Federal
- Other

Time warrants
Other long–term debt

(b) Current liabilities

Notes payable
Accounts payable
Matured long–term debt
Due to other funds
Interest payable:
- Matured
- Unmatured

Deposits—customers'
Deposits—service connections and meters
Deposits—construction
Taxes accrued
Other current liabilities

(c) Deferred credits

Advances for construction

Deferred credits

(d) Reserves

Insurance reserves
Employee benefits reserves

Other reserves

(e) Investment in fixed assets

Investment in electric plant	Investment in other assets
Contributions	Contributions
Other sources	Other sources

(f) Fund balances

General Fund balance	Other fund balances

HISTORY

1. Amendment of subsection (e) and new subsection (f) filed 9–16–70; effective thirtieth day thereafter (Register 70, No. 38).

§ 1093.3. Revenue Accounts.

(a) Sales of electric energy

Residential	Sales for resale
Business and industrial	Interdepartmental
Rural	Other
Sales to public authorities	

(b) Other electric revenues

Servicing of customers' Installations	Other

(c) Non–operating

Revenues from lease of other physical property	Other governmental agencies
Interest revenues	Federal
Taxes and assessments	State
Special district augmentation fund	Homeowners' property tax relief
Revenues applicable to prior years	Business inventory property tax relief
	Other
	Other
	Revenues from other activities

NOTE: Authority and reference cited: Section 53891, Government Code.

HISTORY

1. Amendment of subsection (c) filed 9–16–70; effective thirtieth day thereafter (Register 70, No. 38).
2. Amendment of subsection (c) filed 1–15–80 as an emergency; effective upon filing (Register 80, No. 3). A Certificate of Compliance must be filed within 120 days or emergency language will be repealed on 5–15–80.
3. Certificate of Compliance filed 3–27–80 (Register 80, No. 13).

§ 1093.4. Expense Accounts.

(a) Production

Supervision, labor and expense	Purchased power
Maintenance—structures and improvements	Generation fuel, water and steam

(b) Transmission

Supervision, labor and expense	Maintenance—structures and improvements

(c) Distribution

Supervision, labor and expense	Maintenance—structures, improvements and equipment

(d) Customer accounts

Supervision, meter reading and other expense	Uncollectible accounts

(e) Administrative and general

Salaries	Franchise requirements
Office supplies and other expenses	Rents and leases
	Maintenance—general plant
Property insurance, injuries and damages	Other
Employees' retirement and benefits	

(f) Other operating

Depreciation and amortization	Other
Taxes	Expense credits

(g) Non–operating

Interest on long–term debt	Other
	Expense credits
Other interest	Expenses of other activities
Expenses applicable to prior years	

Article 8. Waste Disposal Districts

§ 1101.1. Application.

The system of accounting herein described shall be used by all California special districts engaged in waste–water or solid waste disposal, which either:

(1) Make regular charges against users of the service within the district to cover all or a portion of operating expenses. "Regular service charges" includes regular availability or standby charges, but does not include one–time charges, such as annexation and connection fees, or

(2) Have annual operating expenses of $50,000 or more.

Districts normally involved in waste disposal are sanitary, sanitation, sewer, garbage disposal, etc. It is frequently the primary activity of county water, community services and public utility districts.

Districts having neither service charges nor operating expenses of $50,000 may, at their option, use either the system herein described or the system described in "Article 9. Other Districts." Once a district uses the Waste Disposal System, whether by requirement or by choice, it may not later change to another system.

If the principal activity of the district is an activity other than waste disposal, but the waste disposal phase requires use of this system, the operating accounts, only, are required.

NOTE: Authority cited for Art. 8: Sections 30200 and 35891, Government Code.

HISTORY

1. New Article 8 filed 5–21–69; designated effective 7–1–70 (Register 69, No. 21).

§ 1101.2. Accounting Method and Basis.

The enterprise approach, having as its objective the determination of financial position and the results of operations by fiscal period, is prescribed. Accounts shall be kept by the double–entry method on the accrual basis, with the exception of assessments and ad valorem taxes, for which the accrual basis is optional.

§ 1101.3. Funds.

Funds provided for use of waste disposal districts are listed and defined in Section 1102. Unless legally required to account for specific resources in separate funds, the district may include them within the General Fund.

§ 1101.4. Nominal Accounts.

Revenues are classified by source. Expenses are classified by expense center and by nature of expense.

§ 1101.5. Fixed Assets.

Acquisitions of fixed assets are capitalized in accordance with enterprise accounting practice. Definitions and value and life tests for fixed asset recognition are those presented in "Accounting For General Fixed Assets."

HISTORY

1. Amendment filed 3–8–77; effective thirtieth day thereafter (Register 77, No. 11).

§ 1101.6. Optional Depreciation Method.

As used in this section "actual" depreciation refers to depreciation based on the cost, or appraised value if cost is not readily available, and estimated lives of individual assets, or limited groups of like assets. Actual "straight line" depreciation is preferred. However, since at the effective date of this System many districts will lack both historical cost of fixed assets and experience in depreciation, the following approximation may be used.

1970–71 (or first fiscal year starting after July 1, 1970) is the base year. Depreciation for this year will be 40% of total operating expenses exclusive of depreciation. For 1971–72 the depreciation allowance will be 38.75% of base year operating expenses, plus actual depreciation on assets acquired on or after July 1, 1970. Thereafter the percentage declines 1 1/4% per year, until after 32 years depreciation will be entirely on an actual basis.

Depreciation Allowance on Fixed Assets Acquired Prior to 7–1–70

Year Ending June 30	%	Year Ending June 30	%	Year Ending June 30	%	Year Ending June 30	%
1971	40	1979	30	1987	20	1995	10
2	38.75	80	28.75	8	18.75	6	8.75
3	37.5	1	27.5	9	17.5	7	7.5
4	36.25	2	26.25	90	16.25	8	6.25
5	35	3	25	1	15	9	5
6	33.75	4	23.75	2	13.75	2000	3.75
7	32.5	5	22.5	3	12.5	1	2.5
8	31.25	6	21.25	4	11.25	2	1.25

These estimates are designed to exclude depreciation on underground and underwater plant. However, they will include depreciation applicable to any surface assets which have been donated.

Balance sheet values with respect to fixed assets acquired prior to July 1, 1970 may be estimated as follows:

Underground & underwater plant	20 X base year operating expenses.
All other plant	12.8 X base year operating expenses.
Allowance for depreciation—All other plant	6.2 X base year operating expenses.

A district commencing under the Optional Method may switch to actual depreciation in any subsequent year. A district may not change from actual to Optional depreciation.

§ 1101.7. Disposition of Fixed Assets.

When fixed assets are sold or disposed of otherwise, the gain or loss, measured by the difference between book value and the consideration received, is a current charge or credit.

§ 1101.8. Current and Long–Term Assets and Liabilities.

Assets and liabilities are segregated in the chart of accounts between current and long–term. Current assets are those which are normally convertible to cash within a twelve–month period. Prepaid expenses have a cash–equivalent value and are included as current. Other assets fall into some category of long–term.

Similarly, liabilities which will become payable within twelve months are classed as current.

Status of the transaction at the time first recorded determines whether it is posted to a current or long–term account. It is unnecessary that transitions from long–term to current status be posted in the books. However, the proper segregation should be displayed on the balance sheet.

§ 1101.9. Interest During Construction Period.

Interest expense during the construction period on money borrowed to finance the construction shall be capitalized. Interest expense after the facility is placed into service is an operating expense.

When a single bond issue finances several projects which will be completed in stages, the interest applicable to each during its period of construction must be determined.

§ 1101.10. Account Adjustments—Current.

Transactions which correct a previously recorded transaction of the current period are posted directly to the account affected. Recovery of costs from insurance or damage settlements shall be credited against the account charged with the costs.

§ 1101.11. Account Adjustments—Prior.

Transactions which correct nominal account balances of prior fiscal periods are posted to one of two current accounts, "Revenues applicable to prior years" or "Expenses applicable to prior years."

§ 1101.12. Bond Premium, Discount and Expense.

Bond premium, discount and expense may be credited or charged to operations in the year the bonds are sold, except that if a discount is substantial in relation to the bonds, it should be amortized over the life of the bonds.

§ 1101.13. Cash Discounts.

Purchase discounts allowed for early payment may be treated as expense reductions or as revenue at the option of the district. Trade discounts are always netted from the purchase price before recording.

§ 1101.14. Investments.

Investments shall be shown on the balance sheet at book value, adjusted for any unamortized premium or discount.

§ 1102. Standard Funds.

The following classes of funds are recognized for use of waste disposal districts:

(a) General. A fund that is available for any authorized purpose and which is therefore used to account for all revenues and all expenditures not provided for in other funds.

(b) Debt Service. A fund used to account for resources set aside for the periodic payment of interest, and the principal of matured long–term debt.

(c) Accumulative Capital Outlay. A fund used to account for the accumulation of revenues restricted for capital outlay under Section 53731 of the Government Code.

(d) Construction. A fund used to account for the proceeds from the sale of bond issues, from governmental grants, or from other resources restricted for capital outlay.

(e) Special Assessment. A fund used to account for assessments levied against certain properties to defray the cost of improvements or services presumed to be of special benefit to the property owners.

(f) Intragovernmental Service. A fund which accounts for services furnished to the district and which is financed primarily by charges for such services.

(g) Trust and Agency. A fund used to account for money or other property received by the district in the capacity of trustee or agent.

HISTORY

1. Amendment of subsection (f) filed 3–8–77; effective thirtieth day thereafter (Register 77, No. 11).

§ 1103.1. Asset and Other Debit Accounts.

(a) Current assets

- Cash
- Imprest cash
- Cash with fiscal agents
- Notes receivable
- Accounts receivable
- Allowance for doubtful accounts
- *Taxes receivable
- *Allowance for uncollectible taxes
- Due from other funds
- Due from other governmental agencies
- Deposits
- Inventories
- Temporary investments
- Prepaid expenses
- Other

(b) Property, plant and equipment

- Land
- Property rights
- Sewage collection facilities
- Sewage treatment facilities
- Sewage disposal facilities
- Solid waste disposal facilities
- General plant and administrative facilities
- Other physical property
- Construction in progress
- Allowance for depreciation and amortization

(c) Restricted and other long–term assets

- Contracts and notes receivable
- Restricted assets

(d) Deferred debits

- Preliminary survey and investigation charges
- *Clearing accounts
  - Stores
  - Transportation
  - Shop
- Other work in progress
- Other

*Optional accounts.

§ 1103.2. Liability and Other Credit Accounts.

(a) Current liabilities

Notes payable
Accounts payable
Matured and maturing long-term debt
Interest payable
Matured
Accrued
Deposits
Customers'
Service connections
Construction
Due other funds
Due other governmental agencies
Accrued payroll
Accrued taxes
Other

(b) Long-term debt

Bonds
Other governmental agencies
Other

(c) Deferred credits

Advances for construction
Other

(d) Reserves

Reserves for restricted assets
Other

(e) Investment in fixed assets

Investment in operating plant
Contributions
Other sources
Investment in other assets
Contributions
Other sources

(f) Fund balances

General Fund balance
Other fund balances

HISTORY

1. Amendment of subsection (e) and new subsection (f) filed 9–16–70; effective thirtieth day thereafter (Register 70, No. 38).

§ 1103.3. Income Accounts.

(a) Operating

Service charges
Permit and inspection fees
Connection fees
Other services
Sales of reclaimed water
Other sales

(b) Non-operating

Annexation charges
Rents and leases
Taxes
Special district augmentation fund
Franchises
Interest
In lieu taxes
Aid from other governmental agencies
Federal
State—Homeowners' property tax relief
State—Business inventory property tax relief
Revenue applicable to prior years
Other

NOTE: Authority and reference cited: Section 53891, Government Code.

HISTORY

1. Amendment of subsection (b) filed 9–16–70; effective thirtieth day thereafter (Register 70, No. 38).
2. Amendment of subsection (a) filed 12–14–72; effective thirtieth day thereafter (Register 72, No. 51).
3. Amendment filed 1–15–80 as an emergency; effective upon filing (Register 80, No. 3). A Certificate of Compliance must be filed within 120 days or emergency language will be repealed on 5–15–80.
4. Certificate of Compliance filed 3–27–80 (Register 80, No. 13).

§ 1103.4. Expense Accounts.

(a) Expense centers

Sewage collection
Sewage treatment
Sewage disposal
Solid waste disposal
Administration and general
Non-operating

(b) Operating expense objects**

Salaries and wages
Employee benefits
Directors' fees
Election expense
Depreciation and amortization
Gasolines, oil and fuel
Insurance
Memberships
Office expense
Operating supplies
Contractual services
Professional services
Printing and publication
Rents and leases
Repairs and maintenance
Research and monitoring
Travel and meeting
Uncollectible accounts
Utilities
Other

(c) Non-operating expense objects

Taxes and assessments
Interest
Expenses applicable to prior years
Other

**To be used as needed within each expense center.

Article 9. Other Districts

§ 1111.1. Application.

The provisions of this Article are prescribed for all districts engaged in activities for which accounting systems are not provided in preceding Articles.

NOTE: Authority cited: Section 53891, Government Code.

HISTORY

1. New Article 9 (Sections 1111.1 through 1111.14, 1112.1, 1113.1, 1114.1 through 1114.6) filed 12–6–67; designated effective 7–1–69 (Register 67, No. 49).

§ 1111.2. Source Publication.

Insofar as possible, this system employs the fund, function, activity and account titles of the publication "Accounting Standards and Procedures for Counties," issued by the State Controller. Where necessary, accounts have been added to meet special needs. Otherwise, the county accounts are equally applicable to districts. A substantial number of districts are accounted for by the county auditor. To the extent that the district systems can coincide with that used by the county, the accounting is facilitated.

§ 1111.3. Accounting Basis.

The modified cash basis of accounting is prescribed with full accrual available as an option. Under the modified cash basis expenditures are recorded when the liability for payment exists; revenue is recorded when received. Under full accrual expenditures are recorded when payable and revenues when receivable. Since the accrual of revenues is optional, a district may elect to accrue some, but not all, revenues so long as this election is consistently exercised.

§ 1111.4. Funds.

The standard funds and groups of accounts to be used in accounting for various resources are given in Section 1113.1.

§ 1111.5. Accounts.

Standard accounts are listed in Sections 1114.1– 1114.6. Each district will select from the chart those which are necessary to adequately account for its financial position and results of operations. Operating accounts are in terms of revenues and expenditures. Revenues are classified by source, and expenditures by object.

§ 1111.6. Subaccounts.

Districts which need or desire more detailed information than that provided by the account in the standard chart may use supplementary accounts, subject to the requirement that each such account used must be identified with a required account by either code number or title, in order that related accounts and subaccounts can be readily combined into the standard form.

§ 1111.7. Enterprise Accounting.

The purpose of enterprise accounting is to determine the profit or loss from operations, a job which the regular governmental-type accounts are not designed to do. Enterprise systems are prescribed only for those activities designated as utility activities (See Articles 2–8). All others must follow the system in this Article. However, districts subject to this Article are free to employ enterprise accounting as an addition to the official records, but not as a substitute for them.

§ 1111.8. Account Adjustments.

Transactions which correct a previously recorded transaction of the current period are posted directly to the account affected. Provision is also made for the transfer of expenditures from one fund or account to another without reducing balances of accounts to which the expenditures were originally posted.

§ 1111.9. Transactions Affecting Prior Balances.

Transactions which adjust operating account balances of prior fiscal periods are posted to one of two current operating accounts:

Expenditures applicable to prior years, or
Revenues applicable to prior years

§ 1111.10. Fixed Assets.

Purchases of fixed assets are charged as current expenditures of the fund from which purchased. Costs of fixed assets owned are carried in the General Fixed Asset Group of Accounts. Definitions and accounting procedures are those contained in "Accounting for General Fixed Assets."

§ 1111.11. Premium on Long–Term Debt.

Premium on long–term debt is accounted as a current revenue of the fund which will account for payment of debt principal and interest.

§ 1111.12. Budgetary Accounting.

Budgetary accounting is recommended as an aid in holding expenditures to a financial operating plan. However, budgetary accounting is not a requirement of this system. Under Section 53065 of the Government Code, districts whose governing body is the county board of supervisors or for which the county fiscal officers are ex officio officers of the district are subject to the budget provisions of Government Code Sections 29000–29143.

§ 1111.13. Multi–Purpose Districts.

Districts which engage in more than one activity must maintain a separate set of revenue and expenditure accounts for each. However, only one set of balance sheet accounts, covering all activities, need be kept. If one of the activities is a recognized utility activity, see Article 1—General Information, Section 1031.8.

§ 1111.14. Procedures by Reference.

Accounting for general fixed assets and for special assessments are described in the two publications:

Accounting for General Fixed Assets
Special Assessment Accounting

§ 1112.1. Activity Classification.

For reporting purposes each district shall designate its activity according to the following list. This must be done if districts are to be properly grouped, since neither the district name nor its account structure will always indicate the nature of its operation. Multi–purpose districts shall list each different activity.

Air pollution control
Ambulance service
Cemetery maintenance
Drainage and drainage
Financing or constructing facilities
Fire protection
Flood control and water conservation
Health
Land reclamation and levee maintenance
Library services
Lighting and lighting maintenance
Local and regional planning or development
Memorial
Parking
Pest control
Police protection and personal safety
Recreation and park
Resources conservation
Streets and roads—construction–tion and maintenance
Television translator station facilities
Underground electric and communication facilities
Waste disposal

HISTORY

1. Amendment filed 3–8–77; effective thirtieth day thereafter (Register 77, No. 11).

§ 1113.1. Funds and Account Groups.

The funds and account groups listed and defined in this section ar prescribed for use by districts in the accounting situations indicated.

(a) General. The fund that is available for any authorized purpose and which is therefore used to account for all revenues and all expenditures not provided for in other funds.

(b) Debt Service. A fund used to account for revenues appropriated for the periodic payment of interest, and the principal of matured long–term debt.

(c) Accumulative Capital Outlay. A fund used to account for revenues and expenditures of monies restricted to capital outlay.

(d) Zone No. ___. A fund used to account for taxes and assessments levied upon less than the entire taxable property of the district and other revenues restricted for the benefit of the areas taxed.

(e) Bond. A fund used to account for the proceeds from the sale of bonds issued.

(f) Intragovernmental Service. A fund which accounts for services furnished to the district and which is financed primarily by charges for such services.

(g) Special Assessment. A fund which accounts for assessments levied against certain properties to defray the cost of improvements or services presumed to be of special benefit to the owners of such property.

(h) Trust and Agency. A fund used to account for money or other property received by the district in its capacity of trustee or agent to be disbursed in accordance with the conditions of the trust or agency.

(i) General Fixed Asset Group of Accounts. A self–balancing group of accounts to present the cost, or assigned value in lieu of cost, of fixed assets owned by the district, along with sources of investment.

(j) General Long Term Debt Group of Accounts. A self–balancing group of accounts to present the amount of future principal and interest payments on long–term debt of the district.

HISTORY

1. Amendment of subsection (f) filed 3–8–77; effective thirtieth day thereafter (Register 77, No. 11).

§ 1114.1. Asset and Other Debit Accounts.

Cash
Imprest cash
Cash with fiscal agents
*Taxes receivable
*Allowance for uncollectible taxes
Assessments receivable
Assessments receivable—delinquent
Accounts receivable
Allowance for uncollectible accounts
Advances receivable
Deposits from others
Inventory of materials and supplies
Investments
Advances to working capital funds
Land
Structures and improvements
Equipment
Construction in progress
Future loan repayment requirements
Future bond redemption requirements
Bonds authorized—unissued

HISTORY

1. Amendment filed 9–16–70; effective thirtieth day thereafter (Register 70, No. 38).

*Optional accounts.

§ 1114.2. Liability Accounts.

Warrants payable
Accounts payable
Loans payable
Bonds payable
Interest payable
Deposits from others
Loans payable—deferred
Bonds payable—deferred
Interest payable—deferred

§ 1114.3. Equity Accounts.

Reserves (Designate)
Investment in general fixed assets
Fund balances
General Fund balance
Other fund balances

HISTORY

1. Amendment filed 9–16–70; effective thirtieth day thereafter (Register 70, No. 38).

§ 1114.4. Operating and Budgetary Control Accounts.

Expenditures
Estimated revenues
Encumbrances
Estimated loan proceeds
Revenues
Appropriations

§ 1114.5. Revenue Accounts.

(a) Taxes

Property taxes—current—secured
Property taxes—current—unsecured
Property taxes—prior—secured
Property taxes—prior—unsecured
Special district augmentation fund
Property assessments
Penalties and costs on delinquent taxes

(b) Licenses and Permits

Construction permits
Zoning permits
Other licenses and permits

(c) Fines, Forfeits and Penalties

Fines
Forfeits and penalties

(d) Revenue from Use of Money and Property

Interest
Royalties
Rents and concessions

(e) Aid from Other Governmental Agencies

State aid for construction
State–other
Homeowners' property tax relief
Federal aid for construction
Business inventory property tax relief
Federal–other
Other governmental agencies

(f) Charges for Current Services

Communication services
Road and street services
Legal services
Health fees
Personnel services
Mental health services
Planning and engineering services
Educational services
Purchasing fees
Library services
Agricultural services
Park and recreation services
Law enforcement services
Other services (Designate)

(g) Other Revenues

Contributions from private parties
Revenue applicable to prior years
Premium and accrued interest on bonds issued
Sale of fixed assets
Other sales
Revenue from discontinued districts
Other

NOTE: Authority and reference cited: Section 53891, Government Code.

HISTORY

1. Amendment of subsection (e) filed 9–16–70; effective thirtieth day thereafter (Register 70, No. 38).
2. Amendment filed 1–15–80 as an emergency; effective upon filing (Register 80, No. 3). A Certificate of Compliance must be filed within 120 days or emergency language will be repealed on 5–15–80.
3. Certificate of Compliance filed 3–27–80 (Register 80, No. 13).

§ 1114.6. Expenditure Accounts.

(a) Salaries and Employee Benefits

Salaries and wages
Employee group insurance
Retirement

(b) Services and Supplies

Agricultural
Maintenance—structures improvements and grounds
Clothing and personal supplies
Communications
Medical, dental and laboratory supplies
Food
Household expense
Memberships
Insurance
Miscellaneous expense
Office expense
Rents and leases—structures, improvements and grounds
Professional and specialized services
Publications and legal notices
Small tools and instruments
Rents and leases—equipment
District special expense
Maintenance—equipment
Transportation and travel
Utilities

(c) Other Charges

Contributions to other agencies
Rights of way
Repayments—long–term debt
Taxes and assessments
Interest–long–term debt
Expenditures applicable to prior years
Interest on notes and warrants
Judgments and damages

(d) Fixed Assets

Land
Equipment
Structures and improvements

(e) Expenditure Transfers and Reimbursements

Costs applied

HISTORY

1. Amendment of subsection (e) filed 8–5–76; effective thirtieth day thereafter (Register 76, No. 32).

Article 10. Redevelopment Agencies

§ 1115.1. Application.

The provisions of this Article are prescribed for all redevelopment agencies which are required to report to the State Controller under Section 12463.1 of the Government Code.

NOTE: Authority cited: Section 53891, Government Code. Reference: Section 99243, Public Utilities Code and Section 53891, Government Code.

HISTORY

1. Repealer of Article 10 (Section 1115) and new Article 10 (Section 1115.1–1117.5) filed 6–28–78; designated effective 7–1–78 per Section 99243, Public Utilities Code (Register 78, No. 26). For prior history, see Register 70, No. 38.

§ 1115.2. Accounting Approach.

The accounting system prescribed is traditional fund accounting used by governmental agencies for general operations. The redevelopment project is the accounting entity. Accordingly, the prescribed accounting system shall be used to account for the general operations of each redevelopment project.

§ 1115.3. Accounting Basis.

The basis of accounting shall be that appropriate to the type of fund as determined by reference to, "Governmental Accounting, Auditing, and Financial Reporting" (MFOA) and the "Industry Audit Guide—Audits of State and Local Governmental Units" (AICPA).

§ 1115.4. Project Funds.

All activity of the redevelopment agency is accounted for by project. The standard funds and account groups applicable to governmental agencies are also applicable to redevelopment projects. Section 1116 lists and defines the minimum funds and account groups to be used by redevelopment projects. Should an activity of a redevelopment project meet the criteria established by GAAFR for use of other funds (e.g. Enterprise, Intragovernmental Service, Capital Projects, Trust and Agency, Special Revenue or Special Assessment) the agency may use such funds if approved in writing by the State Controller's Office.

§ 1115.5. Accounts.

Each redevelopment project will select from the chart of accounts those accounts needed to adequately account for its financial position and results of operations. Revenues are classified by source and expenditures by function and object.

§ 1115.6. Subaccounts.

Agencies which need or desire more project detail than is provided by the chart of accounts may use supplementary accounts, subject to the requirement that each such account must be identified with a required account by either number or title, in order that transactions can be reported in a uniform manner.

§ 1115.7. Fixed Assets.

Redevelopment agencies exist to facilitate improvements in designated areas. To accomplish this they engage in planning, clearance, construction and reconstruction activities, expenditures for which are normally capitalized. However, such improvements are held by the agency for disposal rather than agency use. Section 1115.8 provides accounting alternatives for these activities. The Fixed Asset Group of Accounts for projects will contain relatively minor acquisitions which are to be utilized by the project. A redevelopment agency which acquires fixed assets using funds of more than one project may maintain accounting control by use of an agency–wide fixed asset group of accounts. In the event an agency elects to use an agency–wide Fixed Asset Group of Accounts the investment in fixed assets must be distributed to individual projects for year–end reporting purposes. The distribution may be made by either worksheet or formal journal entry. If a formal journal entry is used, a reversing journal entry would be made at the beginning of the subsequent fiscal year. Definitions and accounting procedures are those described in "Accounting for General Fixed Assets" published by the State Controller's Office.

§ 1115.8. Land and Improvements Held for Disposal.

At the option of the redevelopment agency, such costs may be accounted for as (1) period charges or (2) Investments—Land and Improvements Held for Disposal. If an agency elects to use option (2) such investments will be stated at lower of cost or market value. In addition Annual Reports of Financial Transactions submitted to the State Controller will include an analysis of changes in the investments account balance. Such analysis shall be in the format and contain the information required by the State Controller.

§ 1115.9. Premium/Discount on Long Term Debt.

The agency may either:

(1) Record premium on the sale of bonds as a revenue of the project and discount as a project charge in the year of sale, or

(2) Capitalize premium and discount and amortize them during the life of the bonds.

§ 1115.10. Budgetary Accounting.

Budgetary accounting is not a requirement of the system and such accounts are not included in the chart of accounts. Agencies desiring to incorporate budgetary information into the system may use the control accounts:

(1) Estimated Revenue
(2) Appropriations
(3) Encumbrances

§ 1116. Funds and Account Groups.

The funds and account groups defined in this Section are prescribed for use by agencies in the accounting situations indicated.

(a) Redevelopment Clearing. The fund used to temporarily account for transactions not conveniently posted directly to a project. All such entries are subsequently allocated and transferred to appropriate project funds. (Use of this fund is optional).

(b) Project Fund. The fund used to account for all current assets and liabilities, investments, revenues and expenditures of a project.

(c) Debt Service Fund. The fund used to account for the payment of interest and principal on long-term debt. This is the special fund referred to in the Health and Safety Code to which tax increment monies are allocated and paid.

(d) Long Term Debt Group of Accounts. A self-balancing group of accounts used to record and fairly present a project's liability for long-term debt at any time from date of issuance until the debt is retired.

(e) General Fixed Asset Group of Accounts. A self-balancing group of accounts used to present the cost, or assigned value in lieu of cost, of fixed assets owned by the redevelopment project.

§ 1117.1. Asset and Other Debit Accounts.

Cash
Imprest Cash
Cash with fiscal agents
Accounts receivable
Accrued interest receivable
Loans receivable
Contracts receivable
Minimum lease payments receivable
Due from Project Fund
Due from Clearing Fund
Investments
Structures and Improvements
Equipment
Future long term debt principal requirements
Tax increments receivable

§ 1117.2. Liability Accounts.

Accounts payable
Interest payable
Tax anticipation notes payable
Loans payable
Due to Project Fund
Due to Clearing Fund
Tax Allocation bonds payable
Revenue bonds payable
Long-term loans
Unamortized premium/discount on long term debt
Unearned Lease Finance Charges

§ 1117.3. Equity Accounts.

Reserves (designate)
Investment in general fixed assets
Fund Balances

§ 1117.4. Revenue Accounts.

Tax Increment revenue
Sale of bonds
Long term debt proceeds
Premium on bonds
Rental income
Sale of real estate
Gain or loss on sale of land and improvements held for disposal
Sale of other assets
Grants—Federal
Grants—State
Grants—Other
Other income

§ 1117.5. Expenditure Accounts.

Administration costs
Legal services
Planning, survey and design
Real estate purchases
Acquisition expense
Operation of acquired property
Relocation costs
Relocation payments
Site clearance costs
Project improvement costs
Disposal costs
Rehabilitation costs
Rehabilitation grants
Interest expense
Long term debt principal payments
Fixed asset acquisitions

Subchapter 4. Budgeting Procedures for Special Districts

Article 1. General Plan

§ 1121. Districts Included.

Section 53065, Government Code, states that provisions of law relating to budgets which apply to counties shall also apply to any district whose governing body is the board of supervisors or for which the county fiscal officers are ex officio fiscal officers, except:

(a) School districts
(b) Districts in two or more counties
(c) Where such matters are otherwise provided by law

Section 29010 of the Government Code provides that the budget document shall include special districts whose affairs and finances are under the supervision and control of the county board of supervisors.

NOTE: Authority cited: Section 30200, Government Code.

HISTORY

1. New Subchapter 4 (Sections 1121–1127) filed 2–29–68; effective thirtieth day thereafter (Register 68, No. 9).

§ 1122. Budget Approach.

District budgets follow the basic county budgeting concept. The total available fund balance is applied against the total fund requirement, the difference being the amount to be raised by property taxation for that fund. A distinction is made between appropriations, against which expenditures may be made, and reserve provisions, amounts to be raised but which are unavailable for expenditure during the budget period.

§ 1123. Funds and Accounts.

Each district budget shall be in terms of the applicable fund and account titles prescribed by the State Controller for special districts in Sections 1031.1–1114.6, inclusive of the California Administrative Code.

§ 1124. Forms.

Forms available for use in the presentation of district budgets are:

Schedule	*Contents*
11	Summary of district budgets
12	Fund balance available
13	District budget detail
13 continuation	Continuation of appropriation detail of Schedule 13
14	Detail of provision for reserves
15	Bond fund expenditure status
16	School district debt service requirements

NOTE: Authority and reference cited: Section 30200, Government Code.

HISTORY

1. Amendment filed 6–6–80; effective thirtieth day thereafter (Register 80, No. 23).

§ 1125. Standard Format.

Under the standard arrangement a separate Schedule 13 is prepared for each district. The appropriate elements are then collected for all districts on Schedules 11, 12, 14 and 15. All schedules are necessary to present the complete budget of any given district.

§ 1126. Schedule 13B Represents an Alternative to Schedule 13A.

NOTE: Authority and reference cited: Section 30200, Government Code.

HISTORY

1. Repealer filed 6–6–80; effective thirtieth day thereafter (Register 80, No. 23).

§ 1127. Debt Service.

Long-term principal and interest requirements for districts under the board of supervisors must be included in the appropriations listed on Schedule 13. Similarly, debt service reserves must be shown on 14. Debt service requirements for school districts are not required to be included. However, for counties wishing to include these requirements in the budget document as a matter of public information, Schedule 16 has been provided.

NOTE: Authority and reference cited: Section 30200, Government Code.

HISTORY

1. Amendment filed 6-6-80; effective thirtieth day thereafter (Register 80, No. 23).

Subchapter 5. Minimum Audit Requirements and Reporting Guidelines for Special Districts

§ 1131.1. Introduction.

(a) The following audit requirements are not intended to be a comprehensive audit program or check list of things to be completed during a special district audit. This is intended to include only the minimum requirements which the State Controller must prescribe pursuant to Section 26909 of the Government Code.

The county auditor or professional independent certified public accountant or public accountant undertaking an audit of a California Special District should:

(1) Have sufficient knowledge and training to enable him to comply with generally accepted auditing standards.

(2) Have a thorough knowledge of the fundamental principles of governmental accounting, including both fund accounting and enterprise accounting, and governmental auditing.

NOTE: Authority cited: Section 26909(b), Government Code. Reference: Sections 6505 and 26909(b), Government Code.

HISTORY

1. New Subchapter 5 (Sections 1131.1 through 1131.6) filed 9-16-70; effective thirtieth day thereafter (Register 70, No. 38).
2. Repealer of Subchapter 5 (Sections 1131.1-1131.6) and new Subchapter 5 (Sections 1131.1-1131.5) filed 1-15-80 as an emergency; effective upon filing (Register 80, No. 3). A Certificate of Compliance must be filed within 120 days or emergency language will be repealed on 5-15-80.
3. Certificate of Compliance filed 3-27-80 (Register 80, No. 13).

§ 1131.2. Minimum Audit Requirements.

(a) The audit shall be made in accordance with generally accepted auditing standards. Various auditing procedures are suggested and described on pages 41 through 69 of the American Institute of Certified Public Accountants publication Audits of State and Local Governmental Units. No hard and fast rules can be set down as to the specific procedures that should be taken. Professional judgment must be exercised. Following are general statements that the county auditor or independent accounting firm should consider in preparing an audit program in connection with the audit of a California special district.

(1) A proper study and evaluation of the existing internal control and the financial organizational structure should be made. The extent to which an auditor should go in testing the evidential matter supporting his opinion on the financial statements depends on the effectiveness of the district's system of internal control.

Sufficient competent evidential matter is to be obtained through inspection, observation, inquiries, and confirmations to afford a reasonable basis for an opinion regarding the financial statements under examination.

If the internal control is so deficient that an auditor must disclaim his opinion in this regard, the reason for this disclaimer must be set forth in the audit report.

(2) The auditor should review the laws applicable to the financial transactions of the district. For instance, all special districts are subject to a uniform accounting system prescribed by the State Controller. Should there be indications that the district may have failed to comply with legal requirements, the transactions may be referred to proper legal counsel for interpretation of the applicable law. Noncompliance should be commented upon in the report and, if necessary, the auditor's opinion should be qualified, disclaimed or adverse.

(3) The district's report of financial transactions to the State Controller should be reviewed to see that it agrees with the official records of the district for the period. The State Controller should be informed of any material difference.

(4) A review should be made of the previous audit report workpapers and program if available.

(5) The auditor should ascertain what funds are maintained and by what authority or under what circumstances each fund maintained was created.

(6) The auditor should ascertain the basis of accounting, that is, cash, accrual or modified accrual. Accrual is the basis for enterprise funds and modified accrual is the basis for non-enterprise funds. The cash basis is no longer approved for special districts.

(7) The auditor should take a trial balance of the accounts of each fund and should list both opening and closing balances. The opening balances should be compared with the amounts shown in the audit report for the previous period, if any, and any difference should be investigated and reconciled.

(8) A summary of the financial data included in the minutes or other official records of the proceedings of the legislative body should be prepared. Expenditure authorizations and the appropriations made to cover the authorizations should be confirmed.

(9) The auditor should verify the balance of cash on hand.

(10) The auditor should reconcile bank accounts including cash on deposit with county treasurer as of the balance sheet date and such other times as is necessary. He should obtain confirmation from depositories for (1) all bank accounts, time certificates or savings and loan accounts, and (2) collateral securing such accounts, if applicable. Collateral should be examined or confirmed with the depository holding the collateral as trustee. The auditor should determine the adequacy and propriety of the collateral pledged.

(11) The auditor should test the tax levy, tax collection and delinquencies whether processed by the district or the county.

(12) The collection and recording of all ascertainable revenues should be tested during the period under audit. The test should be sufficient to determine that receipts have been recorded in the proper funds and period.

(13) The auditor should determine:

(A) That the expenditures were properly authorized and incurred and are proper charges to the fund and appropriation against which they have been charged.

(B) That the expenditures are supported by the proper documents and that the documents are so marked as to prevent their reuse. In this connection, it should be ascertained whether noncash expenditures, that is, interdepartmental transactions are supported by adequate documentation and were properly recorded.

(14) A review should be made of nonrevenue receipts and nonexpense disbursements to determine if they were legal and properly recorded.

(15) All other assets such as investments, accounts receivable, inventories, paid expenses, fixed assets and similar items should be verified in accordance with generally accepted auditing standards.

(16) All liabilities such as accounts payable, notes payable, contracts payable, judgments and similar items should be verified in accordance with generally accepted auditing standards. Proper authorities should be contacted to ascertain existence of any possible contingent liabilities.

(17) The auditor should verify the fund balance and reserve accounts of all funds.

NOTE: Authority cited: Section 26909(b), Government Code. Reference: Sections 6505 and 26909(b), Government Code.

§ 1131.3. Audit Report Requirements.

(a) The report shall state whether the financial statements are presented in accordance with generally accepted principles of accounting and the State Controller's Minimum Audit Requirements and Reporting Guidelines.

(b) The report shall state whether such generally accepted accounting principles have been observed in the current period in relation to the preceding period.

(c) Informative disclosures in the financial statements are to be regarded as reasonably adequate unless otherwise stated in the report.

(d) The audit report shall contain an opinion regarding the fairness of the financial statements as enumerated by the State Board of Accountancy Rules 58.1 and 58.2. The types of opinions that may be expressed are:

(1) an unqualified opinion

(2) a qualified opinion

(3) an adverse opinion

(4) a disclaimer of opinion

(e) The report shall so state, if the audit is not completed within the statutory time limit.

NOTE: Authority cited: Section 26909(b), Government Code. Reference: Sections 6505 and 26909(b), Government Code.

§ 1131.4. Audit Report Format.

(a) It is suggested that the audit report be prepared in accordance with the following general format. Supplementary information such as schedules, comments, and statistical table are optional and often enhance the usefulness of a report.

(1) Title page

(2) Table of contents

(3) Scope, opinion and other necessary paragraphs

(4) Basic financial statements of each fund:

(A) Balance sheet

(B) Statement of revenues and expenditures

(C) Statement of changes in fund balance

(D) Statement of changes in financial position (enterprise activities only)

(E) Footnotes

(5) Supplementary information

(A) Schedules

1. Fixed asset detail
2. Bonded debt detail
3. Investment detail
4. Revenue detail
5. Expense or expenditure detail

(6) Other schedules

(b) Comments (if too extensive to be covered in schedules or the letter of transmittal)

(1) Organization and description of the district

(2) Accounts and records

(3) Insurance coverage

(4) Budgetary procedure

(5) General comments

(c) Statistical tables if applicable

(1) Legal debt margin

(2) Statement of tax levies, tax collections, and tax delinquencies

(3) Other tables

The AICPA Industry Audit Guide: *Audits of State and Local Governmental Units* contains additional guidance on audit reports.

NOTE: Authority cited: Section 26909(b), Government Code. Reference: Sections 6505 and 26909(b), Government Code.

§ 1131.5. A Management Letter Is Required.

It is understood that management has the responsibility for establishing internal controls and checks. The auditor, however, shall prepare and forward to management, the governing body, and all required recipients of the audit report, a separate letter containing suggestions and recommendations relating to opportunities for improvement in the district's accounting and financial controls. Further, this management letter shall be used to comment on the action or lack of action taken regarding suggestions made in a prior year letter.

It is not intended that this management letter communicate only negative comments. The auditor shall state when proper internal controls are established and in operation. Further remarks concerning proper accounting and reporting practices may be included.

NOTE: Authority cited: Section 26909(b), Government Code. Reference: Sections 6505 and 26909(b), Government Code.

Subchapter 6. Tax Collection Procedures for Counties

Article 1. Forms

§ 1136.1. Application.

Forms listed in this Article shall be used by all county tax collectors and redemption officers.

NOTE: Authority cited: Section 30301, Gov. Code.

HISTORY

1. New subchapter 6 (§§ 1136.1 through 1136.40) filed 12–16–70; effective thirtieth day thereafter (Register 70, No. 51).

§ 1136.2. References.

The number shown parenthetically at the end of each Section refers to the section in "Reference Manual, County Tax Collectors and Redemption Officers," issued by the State Controller, where that form is illustrated.

§ 1136.3. Delinquent Tax Notice—Certificate of Intent to Sell Real Property to the State.

A newspaper notice, published on or before June 8, drawing attention of tax collector's intent to sell real property to the State, the taxes, of which, remain unpaid. This notice should immediately precede the "Notice of Intent to Deed." (2131)

§ 1136.4. Notice of Intent to Deed to the State.

Published in newspaper on or before June 8 and is tax collector's notice of intent to deed to the State all property upon which taxes have been unpaid five years after property was sold to the State. (2220)

§ 1136.5. Parcel Numbering System Explanation.

Explains parcel numbering system used by counties; or, in lieu of that, the list of abbreviations. (2242.4)

§ 1136.6. Notice of Intent to Deed Real Property to the State.

Notice appearing in newspapers when list is divided and distributed to more than one newspaper in the county. (2253.1)

§ 1136.7. Notice—Property to Be Deeded to the State.

This notice is mailed to the last assessee of the property. It is sent by registered or certified mail. (2260)

§ 1136.8. Delinquent Tax Notice—Certificate of Real Properties Sold to the State.

Published in a newspaper on or before September 8 by the tax collector. It lists all real property sold to State the preceding June which has not been redeemed. (2320)

§ 1136.9. Addenda to Published Delinquent List.

Should an "Addenda List" be required for any year, it will immediately follow at the end of the regular Published Delinquent List. (2321)

§ 1136.10. Delinquent Tax List.

If the delinquent list is divided in more than one newspaper, this notice appears above, and in conjunction with, the Published Delinquent List. (2353.1)

§ 1136.11. Statement of Property Sold to State.

HISTORY

1. Repealer filed 12–14–76; effective thirtieth day thereafter (Register 76, No. 51).

§ 1136.12. Tax Collector's Summary Statement of Sale to the State Pursuant to Section 3446(a), Revenue and Taxation Code.

Form furnished by the Controller to the tax collector, to be used in lieu of T.D.L. 3410 by those counties under the Alternative Procedure. It is submitted by tax collector on or before August 31. (3452.3)

§ 1136.13. Conveyance of Real Estate.

Standard deed form furnished by the Controller to all tax collectors. It is used in deeding property to the State for nonpayment of delinquent taxes. This form is also used in issuing a corrected deed to the State when a clerical error or misstatement of fact has been made, provided, in the latter case, the publication of "Notice of Intent to Deed to State" is correct. (L.G.F.A. 503)

HISTORY

1. Amendment filed 12–14–76; effective thirtieth day thereafter (Register 76, No. 51).

§ 1136.14. Certificate of Erroneous Tax Deed and Order to Cancel.

HISTORY

1. Repealer filed 12–14–76; effective thirtieth day thereafter (Register 76, No. 51).

§ 1136.15. Application to County Tax Collector for the Purchase of Tax Deeded Property.

Application form to be filled out by prospective purchaser for the purchase of tax deeded property at public auction sale. (6231)

§ 1136.16. Notice of Intention to Sell, Request for Controller's Authorization to Sell, and Report of Sale of Property at Public Auction or Sealed Bid.

Forms to be used by the tax collector in securing necessary approvals to sell tax deeded property at public auction or sealed bid, and to report the disposition of the property at the sale (6241 and 6241a).

HISTORY

1. Amendment filed 12–14–76; effective thirtieth day thereafter (Register 76, No. 51).

§ 1136.17. Authorization by the State Controller for the Sale of Tax Deeded Property at Public Auction.

Upon receipt of a resolution from tax collector, this form is authorization by the State Controller for sale of such property. (6243)

§ 1136.18. Notice of Sale of Property Deeded to the State for Delinquent Taxes.

Forms for newspaper publication or posted notice by the tax collector of intent to sell tax deeded property at public auction or sealed bid sale (6245.23a or 6245.23b).

HISTORY

1. Amendment filed 12–14–76; effective thirtieth day thereafter (Register 76, No. 51).

§ 1136.19. Notice of Sale of Tax Deeded Property.

Notice of proposed sale to last assessee of property. It is sent either by registered or certified mail. (6245.3).

HISTORY

1. Amendment filed 12–14–76; effective thirtieth day thereafter (Register 76, No. 51).

§ 1136.20. Deed to Purchaser.

Deed from tax collector to the purchaser upon receipt of full purchase price at completion of sale. (6273.1)

§ 1136.21. Agreement to Purchase Tax Deeded Land. Purchase by State.

(Div. 1, Part 6, Chapter 8, Revenue And Taxation Code). Agreement between the Board of Supervisors of the County and the State of California for State purchase of property in unincorporated area of the County (6332a). Agreement between the Board of Supervisors of the County, the State of California, and a city, for State purchase of property within the city's boundaries (6332b).

HISTORY

1. Amendment filed 12–14–76; effective thirtieth day thereafter (Register 76, No. 51).

§ 1136.22. Agreement to Purchase Tax Deeded Land. Purchase by County.

(Div. 1, Part 6, Chapter 8, Revenue And Taxation Code). Agreement between the Board of Supervisors of the County and the State of California for County purchase of property in unincorporated area of the County (6332c).

Agreement between the Board of Supervisors of the County, the State of California and a city, for County purchase of property within the city's boundaries (6332d).

HISTORY

1. Amendment filed 12–14–76; effective thirtieth day thereafter (Register 76, No. 51).

§ 1136.23. Agreement to Purchase Tax Deeded Land. Purchase by City.

(Div. 1, Part 6, Chapter 8, Revenue And Taxation Code). Agreement to purchase between the Board of Supervisors of the County and a city which is a taxing agency (6332e). Agreement to purchase between the Board of Supervisors of the County and a city which is a revenue district (6332f).

HISTORY

1. Amendment filed 12–14–76; effective thirtieth day thereafter (Register 76, No. 51).

§ 1136.24. Agreement to Purchase Tax Deeded Land. Purchase by Revenue District.

(Div. 1, Part 6, Chapter 8, Revenue And Taxation Code). Agreement to purchase between the Board of Supervisors of the County and the revenue district. (6332)

HISTORY

1. Amendment filed 12–14–76; effective thirtieth day thereafter (Register 76, No. 51).

§ 1136.25. Agreement to Purchase Tax Deeded Land. Purchase by Taxing Agency.

(Div. 1, Part 6, Chapter 8, Revenue And Taxation Code). Agreement to purchase between the Board of Supervisors of the County, the taxing agency (6332(h)).

HISTORY

1. Amendment filed 12–14–76; effective thirtieth day thereafter (Register 76, No. 51).

§ 1136.25.1. Agreement to Purchase Tax Deeded Land. Purchase by Redevelopment Agency.

(Div. 1, Part 6, Chapter 8, Revenue and Taxation Code.) Agreement to purchase between the Board of Supervisors of the County and the redevelopment agency (6332–I).

NOTE: Authority cited: Section 30301, Government Code. Reference: Section 30301, Government Code.

HISTORY

1. New section filed 12–14–76; effective thirtieth day thereafter (Register 76, No. 51).

§ 1136.26. Exhibit "A."

Form to be attached to each Agreement under Div. 1, Part 6, Chapter 8 of the Revenue and Taxation Code, Forms Nos. 6332a, b, c, d, e, f, g, h, and I. The Exhibit "A" shows the description of the property, first year delinquent, sale number and purchase price (6332–J).

HISTORY

1. Amendment filed 12–14–76; effective thirtieth day thereafter (Register 76, No. 51).

§ 1136.27. Notice of Agreement to Purchase Property Deeded to the State for Delinquent Taxes.

(Div. 1, Part 6, Chapter 8, Revenue and Taxation Code.) The tax collector, upon receipt of the authorization from the State Controller, shall publish this notice when the tax deeded property is being purchased by the State, a city, taxing agency, revenue district, or redevelopment agency (6341.2a).

HISTORY

1. Amendment filed 12–14–76; effective thirtieth day thereafter (Register 76, No. 51).

§ 1136.28. Notice of Agreement to Purchase Property Deeded to the State for Delinquent Taxes.

(Div. 1, Part 6, Chapter 8, Revenue And Taxation Code). This form will be used by the tax collector, upon receipt of authorization from the State Controller, when the county purchases property from the State. (6341.2b)

§ 1136.29. Authorization and Direction to Tax Collector.

Notice to the tax collector to publish the notice of the agreement. (6337.2)

§ 1136.30. Notice of Sale for Taxes on Unsecured Property.

This notice of intended sale of seized property (unsecured) for taxes is to be given by publication or posting at least one week before the sale. (8631.3)

§ 1136.31. Letter to Attorney General.

A two–page form letter to Attorney General when rental is past due and tenant ignores previous notices. Submitted to the State Controller by the tax collector; the State Controller then forwards it to the Attorney General after he grants approval. (11342.2)

HISTORY

1. Amendment filed 12–14–76; effective thirtieth day thereafter (Register 76, No. 51).

§ 1136.32. Letter by Condemning Authority Ordering Abatement of a Public Nuisance.

This is a form letter to be filled out by the condemning authority ordering abatement of a public nuisance. (T.D.L. 40)

§ 1136.33. Letter to Former Owner of the Condemned Property, Giving Him 10 Days to Remove Condemned Nuisance. (T.D.L. 41)

§ 1136.34. Form Letter to be Used by Party Offering to Remove Condemned Nuisance. (T.D.L. 42)

§ 1136.35. Form Letter Prepared and Signed by the Tax Collector Giving Authority for Removal of Condemned Nuisance, and Also for Obtaining Signature of Condemning Authority as to Satisfactory Removal. (T.D.L. 43)

§ 1136.36. Rental Agreement Form.

These are pre–numbered lease forms, in triplicate, issued to lessee of tax deeded property. This is the Controller's standard form and is issued to the tax collectors. (No number assigned)

§ 1136.37. Form Letter to Lessee Authorizing Repairs to Improvements on Tax Deeded Property, and Setting Forth How Credit Is to be Allowed on Monthly Rental. (11442.1)

§ 1136.38. Form Letter to Tenant Occupying Tax Deeded Property, by Lease Agreement, That Such Property Has Been Sold or Redeemed and That Said Lease Is Cancelled as of the Date of Such Redemption or Sale. (11523.1)

§ 1136.39. Back Rental Agreement.

When rental payments are delinquent and lessee is unable to pay the entire delinquency in a lump sum, this agreement may be executed to provide for liquidation in installments. (11612.2a)

§ 1136.40. Back Rental Agreement.

This form is used when a person has been collecting rental subsequent to the deed to the State. Settlement can be in full, or in installments if the amount is too large to be met in one payment. (11612.2b)

Subchapter 6.5. Rules and Regulations Relating to California Estate Tax

Article 1. Imposition of Tax

§ 1138.10. Effective Date.

(a) The estate tax (Part 8 of the Revenue and Taxation Code) took effect of June 8, 1982, and applies to the estates of decedents dying on or after said date and before January 1, 2005.

(b) Any liability for inheritance or gift tax incurred prior to such date shall be determined and enforced under the applicable law in effect on the date of death or date of completed transfer as fully and to the same extent as if the repeals of Parts 8 and 9 of Division 2 of the Revenue and Taxation Code had not been made.

NOTE: Authority cited: Section 14103, Revenue and Taxation Code. Reference: Sections 13301, 13302, Revenue and Taxation Code; Section 4 of Initiative Measure, Proposition 6 of June 8, 1982.

HISTORY

1. New subchapter 6.5 (articles 1–7, sections 1138.10–1138.90), article 1 (sections 1138.10–1138.18), and section filed 4–29–96; operative 5–29–96 (Register 96, No. 18)
2. Amendment of subsection (a) filed 10–30–2007; operative 11–29–2007 (Register 2007, No. 44).

§ 1138.12. Tax Imposed — Generally.

(a) In general, property subject to the California Estate Tax includes any real or personal property, and any rights or interest therein or income therefrom, the receipt of or succession to which may be taxed under the California Estate Tax and under the Constitutions of this State and the United States.

(b) The California Estate Tax is due in every case in which the credit is available, whether or not it is claimed for federal estate tax purposes. It is not affected by a failure to take or preserve the federal credit.

NOTE: Authority cited: Section 14103, Revenue and Taxation Code. Reference: Section 13302, Revenue and Taxation Code.

HISTORY

1. New section filed 4–29–96; operative 5–29–96 (Register 96, No. 18)

§ 1138.14.

(a) In no event shall the California Estate Tax result in a total death tax liability to the State of California and the United States in excess of the death tax liability to the United States which would result if Section 13302 of the Revenue and Taxation Code were not in effect. However, in no event shall the California Estate Tax be less than the credit for state death taxes (adjusted under Section 13304 if applicable) less the credits that would have been claimed on lines 17 through 19 on page 1 of the federal estate tax return if there had been no California Estate Tax.

(b) Two calculations of the estate tax are made: one computing the total state and federal estate tax due and one computing the federal estate tax assuming no California estate tax. The sum obtained in the first computation cannot exceed the amount determined in the second computation. If it does, the California Estate Tax is reduced by the excess.

This may be stated by the following formula:

CET + FET <=FET assuming no CET.

NOTE: Authority cited: Section 14103, Revenue and Taxation Code. Reference: Section 13302, Revenue and Taxation Code.

HISTORY

1. New section filed 4–29–96; operative 5–29–96 (Register 96, No. 18)

§ 1138.16. Other States.

"Another state" or "other states" means any state of the fifty states in the United States, other than this state, and includes the District of Columbia, and any possession or territory of the United States.

NOTE: Authority cited: Section 14103, Revenue and Taxation Code. Reference: Sections 13304 & 13830, Revenue and Taxation Code.

HISTORY

1. New section filed 4–29–96; operative 5–29–96 (Register 96, No. 18)

§ 1138.18.

If a decedent, having property with a situs in California, leaves property having a situs in a state other than California, the maximum state death tax credit shall be multiplied by the percentage which the gross value of property having a situs in California bears to the gross value of the entire estate subject to federal estate tax. The product of the calculation shall be the portion of the maximum state death tax credit which is attributable to property having a situs in California. The property having a situs in the other state, whether or not or to what extent the property is taxed in that state, will be ignored for purposes of the California tax.

NOTE: Authority cited: Section 14103, Revenue and Taxation Code. Reference: Section 13304, Revenue and Taxation Code.

HISTORY

1. New section filed 4–29–96; operative 5–29–96 (Register 96, No. 18)

Article 2. Definitions

§ 1138.20. Property in California.

Property located in California includes, but is not limited to:

(1) All real and tangible personal property situated in this state;

(2) All intangible personal property, wherever situated, of a resident decedent;

(3) In general, intangibles of a deceased, non–resident of the United States, if evidence of ownership is in California or if the issuer (i.e., of stock certificates, promissory notes, or similar choses in action) has its principal place of business in California.

(4) Land Trust agreements which expressly provide that the interest of the beneficiary of the trust shall be deemed to be personal property with no right, title, or interest in or to any portion or specific part of the real estate, but only an interest in the earnings or proceeds, shall be deemed to be intangible personal property of the beneficiary.

(5) Real property having a situs in this state is taxable although such property is held in a personal trust. Real property having an actual situs outside this state shall not be taxable with respect to a resident decedent when such property is held in a personal trust.

NOTE: Authority cited: Section 14103, Revenue and Taxation Code. Reference: Section 13402, Revenue and Taxation Code.

HISTORY

1. New article 2 (sections 1138.20–1138.29) and section filed 4–29–96; operative 5–29–96 (Register 96, No. 18)

§ 1138.22. Definition of Property.

(a) Real Property. Real property includes, but is not limited to, leasehold interests, mineral interests (including royalty interests in oil, gas, or similar leases or property interests), the vendee's interest in an executory contract for the purchase of real property, and real interests held in trust.

(b) Intangible Personal Property. The term "intangible personal property" includes but is not limited to, stocks, bonds, notes (whether secured or unsecured), bank deposits, accounts receivable, patents, trademarks, copyrights, good will, fungible goods, partnership interests, life insurance policies, the vendor's interest in an executory contract for the sale of real property, and other choses in action.

NOTE: Authority cited: Section 14103, Revenue and Taxation Code. Reference: Section 13402, Revenue and Taxation Code.

HISTORY

1. New section filed 4–29–96; operative 5–29–96 (Register 96, No. 18)

§ 1138.24. Personal Representative.

(a) "Personal representative" generally means the executor or administrator appointed to administer the decedent's estate. However, when no such person has been appointed, or is no longer acting, then any such person in possession of the property of the estate can be considered a "personal representative" for estate tax purposes.

(b) "Possession" of property means actual or constructive possession and denotes physical dominion or control or the right thereto over the property, including but not limit to joint or co–owners, partners or joint ventures, trustees or other fiduciaries, and transferees or distributees of the estate.

(c) A "personal representative" also includes a guardian, conservator, trustee, or other person charged with the responsibility of paying the estate tax under the provisions of Sections 20100 through 20125 of the Probate Code.

NOTE: Authority cited: Section 14103, Revenue and Taxation Code. Reference: Section 13403, Revenue and Taxation Code; Section 20100, Probate Code; 26 USC Section 2203.

HISTORY

1. New section filed 4–29–96; operative 5–29–96 (Register 96, No. 18)

§ 1138.25. Domicile.

(a) "Domicile" is the one location with which for legal purposes a person is considered to have the most settled and permanent connection, the place where he intends to remain, and to which, whenever he is absent, he has the intention of returning, but which the law may also assign to him constructively. Domicile is acquired by: (1) birth, (2) operation of law, (3) choice.

(b) The domicile of the custodial parent is the domicile of an unmarried minor and cannot be changed by his or her own act.

(c) A married person may retain his or her legal residence in the State of California, notwithstanding a change in legal residence or domicile of his or her spouse.

NOTE: Authority cited: Section 14103, Revenue and Taxation Code. Reference: Section 13407, Revenue and Taxation Code; Section 244, Government Code.

HISTORY

1. New section filed 4–29–96; operative 5–29–96 (Register 96, No. 18)

§ 1138.28. Non–Resident Decedent. Generally.

(a) When a claim is made that domicile was outside the State of California, the taxpayer has the burden of proof.

(b) A claim that a decedent was domiciled in another state shall be supported by a declaration under penalty or perjury under the laws of California or by affidavit.

NOTE: Authority cited: Section 14103, Revenue and Taxation Code. Reference: Sections 13408, Revenue and Taxation Code.

HISTORY

1. New section filed 4–29–96; operative 5–29–96 (Register 96, No. 18)

§ 1138.29. Evidence of Intent.

(a) Evidence of a person's intent as to domicile at the time of death shall include:

(1) The state in which the decedent had, at the time of his death, his principal place of business or employment;

(2) Oral declarations made by the decedent (greater weight is given to the decedent's actions than statements of intent);

(3) Written declarations, whether contained in letters, deeds, wills or contracts and other instruments, made by the decedent;

(4) Place of filing of federal and state income tax returns, and the address given on such returns;

(5) Automobile registration and driver's license;

(6) Registration as a voter;

(7) The center of decedent's social activities, such as membership in local churches, lodges, clubs or societies;

(8) The place where decedent's children attend schools;

(9) Professional or vocational licenses obtained by the decedent from a particular state;

(10) Ownership, purchase, or lease of real property;

(11) Amount of time spent in state;

(12) Place of death and burial.

(b) No single factor is controlling in determining domicile. Rather the factors are examined collectively to determine if the intent to acquire or abandon California domicile exists. A simple declaration of intent to abandon domicile, or physical presence elsewhere is insufficient to abrogate California domicile.

NOTE: Authority cited: Section 14103, Revenue and Taxation Code. Reference: Section 13408, Revenue and Taxation Code.

HISTORY

1. New section filed 4–29–96; operative 5–29–96 (Register 96, No. 18)

Article 3. Estate Tax Returns

§ 1138.30. Return Required.

(a) A California Estate Tax Return is not required to be filed with the State Controller's Office for decedents dying after December 31, 2004.

(b) A California Estate Tax Return is required to be filed with the State Controller's Office for decedents dying on or after June 8, 1982, and before January 1, 2005, if a federal estate tax return (Form 706) is required to be filed with the Internal Revenue Service.

(1) If a California Estate Tax Return is required under this section, then within nine (9) months of the date of death, a return consisting of an original executed copy of the California Estate Tax Return (form ET–1, 10/07) and an executed copy of the federal estate tax return with accompanying schedules and dispositive documents shall be filed with the office of the State Controller, Sacramento, California, at the address indicated on the ET–1.

(2) The postmark date will determine the date of filing when returns are delivered to the State Controller by United States mail. If no postmark is present, a postage meter is used, or delivery is made to another entity, the date of receipt will determine the date of filing.

NOTE: Authority cited: Section 14103, Revenue and Taxation Code. Reference: Section 13501, Revenue and Taxation Code.

HISTORY

1. New article 3 (sections 1138.30–1138.38) and section filed 4–29–96; operative 5–29–96 (Register 96, No. 18)

2. Amendment filed 10–30–2007; operative 11–29–2007 (Register 2007, No. 44).

§ 1138.32. Extension of Time.

An extension of time in which to file the return does not operate as an extension of time in which to make payment.

NOTE: Authority cited: Section 14103, Revenue and Taxation Code. Reference: Sections 13502, 13532, Revenue and Taxation Code.

HISTORY

1. New section filed 4–29–96; operative 5–29–96 (Register 96, No. 18)

§ 1138.34.

Each time an amended federal estate tax return is filed, an amended return shall be filed with the Controller. An amended return shall be filed even though it is anticipated that the additional amended returns will be filed. The return shall consist of an original executed copy of an amended California Estate Tax Return and an executed copy of the amended federal estate tax return with accompanying schedules and relevant documents such as the report of examination changes.

NOTE: Authority cited: Section 14103, Revenue and Taxation Code. Reference: Section 13503, Revenue and Taxation Code.

HISTORY

1. New section filed 4–29–96; operative 5–29–96 (Register 96, No. 18)

§ 1138.36. Notice of Final Determination.

(a) The written notice of the final determination of federal estate tax due shall include copies of any final determination report, any compromise agreement, the closing letter, any court decisions, and any other available evidence of the final determination.

(b) A final federal determination is an irrevocable determination of a taxpayer's liability from which there exists no further right of appeal, either administrative or judicial. Some examples of final determination dates are:

(1) A closing agreement under Section 7121 of the Internal Revenue Code finally and irrevocably adjusting and settling a tax liability.

(2) A decision by the United States Tax Court or a judgment, decree or other order by any court of competent jurisdiction which has become final.

(3) A final disposition of a claim for refund.

(4) An assessment pursuant to a waiver filed under Section 6213 (d) of the Internal Revenue Code or pursuant to a comprise.

NOTE: Authority cited: Section 14103, Revenue and Taxation Code. Reference: Section 13504, Revenue and Taxation Code.

HISTORY

1. New section filed 4–29–96; operative 5–29–96 (Register 96, No. 18)

§ 1138.38. Federal Estate Tax Return.

A "federal estate tax return" includes, but is not limited to, any notice or filing required under federal law, any notice or filing which indicates a tax due, which indicates any change in a tax due, or which could affect the determination of tax due the federal government under Chapter 11 of the Internal Revenue Code.

NOTE: Authority cited: Section 14103, Revenue and Taxation Code. Reference: Section 13501–13504, Revenue and Taxation Code.

HISTORY

1. New section filed 4–29–96; operative 5–29–96 (Register 96, No. 18)

Article 3.5. Penalties

§ 1138.40.

(a) If the required return is not filed on time the delinquency penalty is mandatory unless there is a showing of "reasonable cause" for the delay.

(b) "Reasonable cause" means the exercise of ordinary business care and prudence. The following specific causes for failure to file a return within the time prescribed by law, if clearly established by the taxpayer, will be accepted as reasonable.

(1) Where the return was mailed on time, properly addressed and with sufficient postage to reach the Controller's Office in the normal course of United States mail service within the legal period.

(2) Where the delay or failure to file was due to erroneous information given the taxpayer by an employee of the Controller.

(3) Where the delay or failure to file was caused by death or serious illness of the taxpayer or serious illness in the immediate family.

(4) Where the delay was caused by the unavoidable absence of the taxpayer.

(5) If a similar penalty for failure to timely file the federal estate tax return is waived, the waiver shall be deemed to constitute reasonable cause. On the other hand, if a similar federal penalty is assessed and not waived, it shall be presumed that reasonable cause does not exist. A "similar" penalty is one imposed when the return was filed late with California for essentially the same reasons and at the same time. For example, if a federal estate tax return was filed late in January 1994 and IRS granted a penalty waiver but no return was filed with California until November 1994, the federal waiver will not be recognized.

(c) Generally, the failure to timely file is not excused by reliance on an agent and such reliance is not reasonable cause for late filing

NOTE: Authority cited: Section 14103, Revenue and Taxation Code. Reference: Section 13510, Revenue and Taxation Code; *United States v. Boyle* (1985) 469 US 241).

HISTORY

1. New article 3.5 (sections 1138.40–1138.42) and section filed 4–29–96; operative 5–29–96 (Register 96, No. 18)

§ 1138.42.

(a) The taxpayer has the burden of proving reasonable cause.

(b) The taxpayer shall set forth any claim of reasonable cause for a delinquent filing an affidavit or declaration under penalty of perjury.

NOTE: Authority cited: Section 14103, Revenue and Taxation Code. Reference: Section 13510, Revenue and Taxation Code; *United States v. Boyle* (1985) 469 US 241).

HISTORY

1. New section filed 4–29–96; operative 5–29–96 (Register 96, No. 18)

Article 4. Deficiency Determination

§ 1138.50.

Generally, a "return" includes, but is not limited to all returns required by Section 13501 of the Revenue and Taxation Code, all amended returns required by Section 13503, and the notice required by Section 13504.

NOTE: Authority cited: Section 14103, Revenue and Taxation Code. Reference: Sections 13501, 13503, 13504 & 13516, Revenue and Taxation Code.

HISTORY

1. New article 4 (section 1138.50) and section filed 4–29–96; operative 5–29–96 (Register 96, No. 18)

Article 5. Payment of Tax

§ 1138.60. Liability of Personal Representative.

A personal representative is liable for all taxes, interest and penalties payable on the estate until the same have been paid.

NOTE: Authority cited: Section 14103, Revenue and Taxation Code. Reference: Section 13530, Revenue and Taxation Code.

HISTORY

1. New article 5 (sections 1138.60–1138.68) and section filed 4–29–96; operative 5–29–96 (Register 96, No. 18)

§ 1138.62.

(a) The personal representative is liable for the payment of the tax to the extent of assets subject to his or her control. There may be more than one personal representative. For example, the executor of an estate for payment of the tax rising from assets subject to his or her control as may be the trustee of an inter vivos trust for payment of the tax rising from assets subject to his or her control.

(b) Nothing in this section shall be interpreted as reducing the responsibilities of a personal representative for payment of the California estate tax from the set forth in Sections 20100 to 20125 of the Probate Code.

NOTE: Authority cited: Section 14103, Revenue of Taxation Code. Reference: Section 13530, Revenue and Taxation Code.

HISTORY

1. New section filed 4–29–96; operative 5–29–96 (Register 96, No. 18)

§ 1138.64.

Liability for payment of the tax continues until the tax is paid to the extent of assets which, at the time of decedent's death, or thereafter, became subject to the control of the personal representative. Distribution of the assets does not extinguish liability.

NOTE: Authority cited: Section 14103, Revenue and Taxation Code. Reference: Section 13530, Revenue and Taxation Code.

HISTORY

1. New section filed 4–29–96; operative 5–29–96 (Register 96, No. 18)

§ 1138.66. Extension of Time.

An extension of time for filing a return does not operate to extend the time for payment of the tax.

NOTE: Authority cited: Section 14103, Revenue and Taxation Code. Reference: Section 13531, Revenue and Taxation Code.

HISTORY

1. New section filed 4–29–96; operative 5–29–96 (Register 96, No. 18)

§ 1138.68. Payment to Controller.

Payment of the tax may be in legal tender of the United States, or by negotiable check, draft, or money order to the State Treasurer. The acceptance by the Controller of a check, draft, or money order in U.S. currency constitutes a payment of the tax for which it was given as of the date of the acceptance when, but not before, such instrument is actually paid. If the instrument for any reason is not actually paid, the Controller will proceed to collect the tax, and the taxpayer will remain liable therefor, together with all interest thereon, as though the payment had not been tendered.

NOTE: Authority cited: Section 14103, Revenue and Taxation Code. Reference: Section 13533, Revenue and Taxation Code.

HISTORY

1. New section filed 4–29–96; operative 5–29–96 (Register 96, No. 18)

Article 5.5. Interest

§ 1138.70. Interest on Delinquent Tax.

There is no relief for accrued interest for a late payment of the Estate Tax.

NOTE: Authority cited: Section 14103, Revenue and Taxation Code. Reference: Section 13550, Revenue and Taxation Code.

HISTORY

1. New article 5.5 (sections 1138.70–1138.74) and section filed 4–29–96; operative 5–29–96 (Register 96, No. 18)

§ 1138.72. Rate of Interest.

If the tax due is not paid by the due date, the amount due shall bear interest at the same rate charged for underpayment of estate tax provided in Section 6621(a)(2) of the Internal Revenue Code from the date it became delinquent and until it is paid. Interest under this section shall be compounded daily.

NOTE: Authority cited: Section 14103, Revenue and Taxation Code. Reference: Section 13550, Revenue and Taxation Code.

HISTORY

1. New section filed 4–29–96; operative 5–29–96 (Register 96, No. 18)
2. Repealer and new section filed 10–30–2007; operative 11–29–2007 (Register 2007, No. 44).

§ 1138.74. Partial Payment.

(a) If partial payment is made prior to the delinquent date, and there is no penalty imposed, such payment shall be applied to principal due.

(b) If a penalty is imposed it continues until the filing date and is not stopped by payment on the tax.

NOTE: Authority cited: Section 14103, Revenue and Taxation Code. Reference: Section 13551, Revenue and Taxation Code.

HISTORY

1. New section filed 4–29–96; operative 5–29–96 (Register 96, No. 18)

Article 6. Refunds

§ 1138.80

The Federal Reserve rate is the federal discount rate set by the Federal Reserve Board.

NOTE: Authority cited: Section 14103, Revenue and Taxation Code. Reference: Section 13563, Revenue and Taxation Code.

HISTORY

1. New article 6 (section 1138.80) and section filed 4–29–96; operative 5–29–96 (Register 96, No. 18)

Article 7. Lien of Tax

§ 1138.90

The lien may be enforced against any person liable for the tax or any property subject to the tax, or both.

NOTE: Authority cited: Section 14103, Revenue and Taxation Code. Reference: Section 13610, Revenue and Taxation Code.

HISTORY

1. New article 7 (section 1138.90), section, and form filed 4–29–96; operative 5–29–96 (Register 96, No. 18)
2. Amendment of form ET–1 filed 10–30–2007; operative 11–29–2007 (Register 2007, No. 44).

This form is to be used only for estates of decedents who died on or after June 8, 1982 and before January 1, 2005. Return is due and tax is payable nine months after the date of death.	**CALIFORNIA ESTATE TAX RETURN** CONTROLLER OF THE STATE OF CALIFORNIA BUREAU OF TAX ADMINISTRATION P.O. BOX 942850 SACRAMENTO, CA 94250-2880	DO NOT USE THIS SPACE

Decedent's Name (First, Middle, Last)		Date of Death
County of Probate (enter N/A if no probate proceeding)	Probate Case No.	Social Security No.

Domicile at Date of Death (City, County, and State or Country) Attach Form IT-2, if domicile claimed is *other than* California.

Name of representative or person filing return		Name of Preparer	
Address		Address	
Telephone No.	Social Security No.	Telephone No.	Social Security No.

A COPY OF THE FEDERAL ESTATE TAX RETURN, FORM 706, MUST BE FILED WITH THIS RETURN

An extension to file the Federal Estate Tax Return has not _____ has _____ been granted until (date) _____.
A true copy of the extension *must* be attached to qualify for a like California extension.

COMPUTATION OF TAX:

1. Total state death tax credit allowable for federal estate tax purposes (IRS Form 706, pg 1, line 15)	**1**	
2. Proration of federal estate tax state death tax credit (complete only if there is property located in states other than California)		
a. Gross value for federal estate tax purposes of property located in California (see specific instructions for line 2(a) on reverse)	**2(a)**	
b. Gross value of decedent's estate for federal estate tax purposes (IRS Form 706, page 1, line 1)	**2(b)**	
c. Percent of estate for federal estate tax purposes located in California [line 2(a) divided by line 2(b)]	**2(c)**	%
3. Tax payable to California (line 1 multiplied by line 2(c), or the amount from line 1 if no entry on line 2)	**3**	
4. Late filing penalty (5% of line 3 for each month or portion thereof from due date of return to date of filing up to the maximum penalty of 25%)	**4**	
5. Interest due on amount on line 3 from due date of return (nine months after the date of death) to date of payment	**5**	
6. Total tax, penalty, and interest due (total of lines 3, 4, and 5)	**6**	

PLEASE ATTACH CHECK HERE

REMITTANCES SHOULD BE MADE PAYABLE TO STATE TREASURER

I DECLARE UNDER PENALTY OF PERJURY THAT THIS RETURN, INCLUDING ANY ATTACHMENTS, HAS BEEN EXAMINED BY ME AND TO THE BEST OF MY KNOWLEDGE AND BELIEF IS TRUE, CORRECT AND COMPLETE. IF PREPARED BY A PERSONAL OTHER THAN THE DECLARANT, HIS OR HER DECLARATION IS BASED ON ALL INFORMATION OF WHICH HE OR SHE HAS ANY KNOWLEDGE.

Signature of person filing return	Date	Address
Signature of person preparing this return	Date	Address

ET–1 (Rev. 10/07)

INSTRUCTIONS FOR CALIFORNIA ESTATE TAX RETURN

GENERAL INFORMATION:

- This return must be filed for the estate of every decedent with property in California whose date of death is on or after June 8, 1982 and before January 1, 2005, if Federal Estate Tax Return (IRS Form 706) is required to be filed.
- This return must be filed by the personal representative of the estate. "Personal representative" means the personal representative of the decedent or, if there is no personal representative appointed, qualified and acting within California, property included in the gross estate of the decedent.
- **DUE DATE** – The return is due and any tax liability is payable on or before nine (9) months from the date of death.
- A copy of the Federal Estate Tax Return and any approved extensions must be filed with this return.
- If an amended Federal Estate Tax Return is files, an amended California Estate Tax Return must be filed together with a copy of the amended Federal Estate Tax Return and payment of any additional tax plus interest.
- Written notice of fi9nal determination of the Federal Estate Tax which contains any adjustments must be given within 60 days of t he determination together with payment of any additional tax plus interest.

SPECIFIC INSTRUCTIONS:

- Line 2(a) – Identify items of California Property as listed on various schedules of IRS form 706.
- "Property located in California" of a California resident includes real property located in California; tangible personal property having an actual situs in California; and all intangible personal property, wherever the notes, bonds, stock certificates or other evidence, if any, of the ownership of the intangible personal property may be physically located or wherever the banks or other debtors of the decedent may be located or domiciled.
- "Property located in California" of a non-resident of California who is a resident of the United States includes real property located in California and tangible personal property having an actual situs in California
- "Property located in California" of a non-resident of the United States includes real property located in California, tangible personal property having a situs in California; and all intangible personal property in California including all stock of a corporation organized under the laws of California or which has its principal place of business or does a major part of its business in California or of a federal corporation or national bank which business in California, excluding, however, savings accounts in savings and loan associations operating under the authority of the board and bank deposits, unless those deposits hare held and used In connection wit a business conducted or operated, in whole or in part, in California.
- Line 4—A like extension to file will be granted of the Internal Revenue Service has granted an extension to file the federal estate tax return.
- Line 5—An extension of time to file does not relieve the payment of interest.
- Line 6—If a payment is insufficient to cover the total amount due, it will be applied first against interest due, then penalties and then to the payment of tax.

PRIVACY NOTIFICATION

The information Practices Act of 1977 and the Federal Privacy Act, require the department to provide the following information to individuals who are asked to supply information:

The principal purpose for requesting estate tax return information is to administer the Estate Tax Law of the State of California. This includes the determination ad collection of the correct amount of tax.

The California Revenue and Taxation Code requires every individual liable for any tax imposed by the Code to file a return according to t he rules and regulations prescribed by the State Controller (Section 13501 and 14103). Individuals filing Estate Tax Returns, statements or other documents are required to include their Social Security numbers to provide proper identification and to permit processing of the declarations.

Furnishing all the appropriate information requested by return forms and related date is mandatory. Failure to provide all or art of the requested information may result in the disallowance of claimed exemption, exclusions, credits, deductions or adjustments resulting in increased tax liability, loss or delay in issuance of a refund or overpayment, interest charges on unpaid taxes and other disadvantages to the taxpayer.

Information furnished on the declaration form may be transferred to other governmental agencies as authorized by law (U.S. Internal Revenue Service and Franchise Tax Board), and may be examined by other local, state and federal officials charges with the administration of any tax law.

For those individuals with outstanding tax liabilities, the total amount due may be disclosed to: employers; financial institutions and county records for the purpose of collection the amount owed.

This will be the principal notification under the Information Practices Act and the Executive Order concerning the solicitation of information in connection with any tax return or tax liability of an individual.

Individual have the right to review their own records maintained by the State controller's Office. The Bureau of Tax Administration of the Controller's Office is the agency responsible for requesting and maintaining this information.

Bureau of Tax Administration
P. O. Box 942850
Sacramento, CA 94250-5880
Telephone No.: (916) 445-6321

Article 8. Inspection of Records

§ 1139. Confidential Information; Disclosure.

(a) All information and records relative to any tax imposed by the California Estate Tax Law acquired by the State Controller or any of his or her employees are confidential in nature and, except as may be necessary for the enforcement of the estate tax law, cannot be divulged to any person other than a person liable for the tax or his or her duly authorized agent, or any local, state, or federal tax official.

(b) If the State Controller has received the information to be divulged from the United States Internal Revenue Service, the person to whom it is divulged shall be advised of its source and that the confidentiality afforded thereto must be the same as if it were received directly from the Internal Revenue Service.

(c) Except where otherwise prohibited by federal or state law or by agreement between the Internal Revenue Service and the State Controller, information received from the United States Internal Revenue Service may be divulged only

(1) to representatives of the Internal Revenue Service;

(2) to the State Board of Equalization and the Franchise Tax Board;

(3) to a person liable for the tax or his or her duly authorized agent; and

(4) in judicial proceedings for enforcement of the California Estate Tax Law.

NOTE: Authority cited: Sections 14103 and 14252, Revenue and Taxation Code. Reference: Sections 14251 and 14252, Revenue and Taxation Code.

HISTORY

1. New article 8 (section 1139) and section filed 6–12–2001; operative 7–12–2001 (Register 2001, No. 24).

Subchapter 7. City Financial Report

§ 1141.1. Application.

The accounts and format prescribed in this Subchapter shall be used by general law cities in fulfilling their requirement under Section 40804 of the Government Code to publish annually a summary report of financial transactions.

NOTE: Authority cite: Sections 26909(b), 30200, 40804 and 53891, Gov. Code.

HISTORY

1. New subchapter 7 (Sections 1141.1 through 1141.6) filed 9–16–70; effective thirtieth day thereafter (Register 70, No. 38).

§ 1141.2. Minimum Requirements.

Requirements contained in this Subchapter are minimum. A city may expand the summary, restate or list additional information as it may deem necessary or desirable.

§ 1141.3. Non–Enterprise Operations.

For other than enterprise operations, revenues and expenditures shall be presented as follows:

Revenues
(For the Year Ended June 30, 19__)

Property Taxes	$ xxx
Other Taxes	xxx
Licenses and Permits	xxx
Fines, Forfeits & Penalties	xxx
Revenues from Use of Money and Property	xxx
Revenue from Other Agencies	xxx
Charges for Current Services	xxx
Other Revenues	xxx
Total Revenues	$ xxx

Expenditures
(For the Year Ended June 30, 19__)

	Expenses	*Capital Outlays*	*Total*
General Government—Departmental	$ xxx	$ xxx	
General Government—Nondepartmental	xxx	xxx	
Public Safety	xxx	xxx	
Public Works	xxx	xxx	
Health	xxx	xxx	
Libraries	xxx	xxx	
Park & Recreation	xxx	xxx	
Contribution to other Governmental Funds and Units	xxx	xxx	
Total Expenditures	$ xxx	$ xxx	$ xxx

§ 1141.4. Enterprise Operations.

Enterprise operations are those designated as such in the Annual Report of Financial Transactions to State Controller, LGFA–111. Operations of each enterprise shall be presented as follows:

---------- Enterprise Operation
(For the Year Ended June 30, 19__)

Income	$ xxx
Expense	xxx
Net income (or Loss)	$ xxx
Revenue Bonds Redeemed	$ xxx

§ 1141.5. General Obligation Bonds.

The amount of general obligation bonded indebtedness as of the end of the fiscal year shall be shown.

General Obligation Bonded Indebtedness (as of June 30, 19__) $xxx

§ 1141.6. Assessed Valuation.

The assessed valuation of property subject to local taxation for the year under review shall be displayed as follows:

	Secured			
	State Assessed	Locally Assessed	Unsecured	Total
Land	$	$	$	$
Improvements				
Personal Property				
Total				
Less Exemptions				
Net Total	$	$	$	$

Subchapter 7.5. Conflict of Interest Code

§ 1142. General Provisions.

The Political Reform Act, Government Code Sections 81000, et seq., requires state and local government agencies to adopt and promulgate Conflict of Interest Codes. The Fair Political Practices Commission has adopted a regulation, 2 Cal. Codes of Regs., Section 18730, which contains the terms of a standard Conflict of Interest Code, which can be incorporated by reference, and which may be amended by the Fair Political Practices Commission to conform to amendments in the Political Reform Act after public notice and hearings. Therefore, the terms of 2 Cal. Codes of Regs., Section 18730 and any amendments to it duly adopted by the Fair Political Practices Commission, along with the attached Appendix in which officials and employees are designated and disclosure categories are set forth, are hereby incorporated by reference and constitute the Conflict of Interest Code of the State Controller, except as provided below.

Designated employees shall file statements of economic interests with the agency. With regard to the statement filed by the Deputy State Controller, the agency shall make and retain a copy and forward the original to the Fair Political Practices Commission.

Appendix

Designated Positions	*Disclosure Category*
Division of Administration & Disbursements	
Assistant Deputy State Controller, Administrative	I
Chief, Human Resources	I
Data Processing Manager III	V
CEA, Level I	I
Division of Accounting & Reporting	
Chief, Division of Accounting & Reporting, SCO	I
Chief, Accounting	I
Assistant Chief, Division of Accounting	I
Division of Audits	
Chief Division of Audits, SCO	I
Special Liaison, Division of Audits, SCO	I
Supervising Management Auditor, Financial Related Audits	I
Supervising Management Auditor, Operations	I
Supervising Management Auditor, Compliance Audits	I
Supervising Management Auditor, Quality Control and Training	I
Supervising Management Auditor, Management Analysis and Technical Support	I
Supervising Management Auditor, Financial Audits	I
Personnel/Payroll Services Division	
Chief, Personnel/Payroll Services Division	I
Bureau Chief, Personnel/Payroll Operations	I
Bureau Chief, Program Management Analysis Section, SCO	I
Bureau Chief, Special Projects	I
Information Systems Division	
Chief, Information Systems Division, SCO	I
Data Processing Manager III	V
Data Processing Manager IV	V
Division of Collections	
Chief, Division of Collections, SCO	I
Bureau Chief, Bureau of Unclaimed Property, SCO	I
Bureau Chief, Bureau of Tax Administration, SCO	I
Executive Office	
Chief Deputy State Controller, Finance & Reporting	I
Chief, Deputy State Controller (Exempt)	I
Chief Deputy State Controller, Administrative	I
Deputy State Controller (Trail Court Funding)	I
Deputy State Controller, Taxation	I
Deputy State Controller, Legislation	I
Special Assistant to the State Controller, CEA	I
Assistant to the Controller, Public Affairs	I
Assistant Deputy State Controller (Exempt)	I
Chief Legal Counsel	I
Chief, Communications, SCO	I
Supervising Special Investigator II	I
Assistant Deputy State Controller, State Services	I
Consultants	*

*Consultants shall be included in the list of designated employees and shall disclose pursuant to the broadest disclosure category in the code subject to the following limitation:

The State Controller may determine in writing that a particular consultant, although a "designated position," is hired to perform a range of duties that is limited in scope and thus is not required to fully comply with the disclosure requirements in this section. Such written determination shall include a description of the consultant's duties and, based upon that description, a statement of the extent of disclosure requirements. This determination is a public record and shall be retained for public inspection in the same manner and location as this conflict of interest code.

Disclosure Categories

Statement of Designated Employees in Category I shall include:

All interests in real property in the State of California, as well as investments, business positions and sources of income, including gifts, loans, and travel payments.

[The next page is 199.]

Statement of Designated Employees in Category II shall include:

Investments and business positions in, and income, including gifts, loans, and travel payments from any business entity which is a bank, savings and loan company, or other institution which serves or may serve as a depository for state, state agency, or local government funds.

Statement of Designated Employees in Category III shall include:

Income, including gifts, loans, and travel payments but excluding salary, reimbursement for expenses and per diem, from any local government agency.

Statement of Designated Employees in Category IV shall include:

Investments and business positions in and income, including gifts, loans, and travel payments from any business entity which is subject to the taxes and/or assessments administered in whole or in part by the Tax Collection and Refund Unit of the Division of Collections.

Statement of Designated Employees in Category V shall include:

Investments and business positions in and income, including gifts, loans, and travel payments from any business entity that provides equipment or services which is of the type utilized by the division or office in which they are employed.

Statement of Designated Employees in Category VI shall include:

All interests in real property in the State of California and investments and business positions in and income, including gifts, loans and travel payments from any source which engages in land development or construction or the acquisition, sale, or lease of real property.

NOTE: Authority cited: Sections 87300 and 87304, Government Code. Reference: Section 87300, et seq., Government Code.

HISTORY

1. New subchapter 7.5 (sections 1142–1149, 1149.1, and Exhibits A and B) filed 4–8–77; effective thirtieth day thereafter. Approved by Fair Political Practices Commission 3–15–77 (Register 77, No. 15).
2. Repealer of subchapter 7.5 (sections 1142–1149.1 and Exhibits A and B) and new subchapter 7.5 (section 1142 and Appendix) filed 2–26–81; effective thirtieth day thereafter. Approved by Fair Political Practices Commission 12–1–80 (Register 81, No. 9).
3. Editorial correction of misprinted section number (Register 81, No. 14).
4. Amendment of Appendix filed 2–3–83; effective thirtieth day thereafter. Approved by Fair Political Practices Commission 12–21–82 (Register 83, No. 6).
5. Amendment filed 12–1–83; effective thirtieth day thereafter. Approved by the Fair Political Practices Commission 10–4–83 (Register 83, No. 49).
6. Amendment filed 2–28–85; effective thirtieth day thereafter. Approved by Fair Political Practices Commission 1–8–85 (Register 85, No. 9).
7. Amendment of Appendix filed 3–21–86; effective thirtieth day thereafter. Approved by Fair Political Practices Commission 2–4–86 (Register 86, No. 12).
8. Amendment of Appendix filed 10–7–92 and submitted to OAL for printing only. Approved by Fair Political Practices Commission 8–7–92 (Register 92, No. 41).
9. Amendment of section and Appendix filed 4–22–2004; operative 5–22–2004. Approved by Fair Political Practices Commission 5–23–2003 (Register 2004, No. 17).

Subchapter 7.6. Rules and Regulations Relating to Audit and Recordkeeping Procedures Pertaining to Legislative Expenditures

Article 1. Legislative Expenditures

§ 1145. Purpose.

To prescribe a uniform system of audit and recordkeeping procedures for claims presented to the Controller by legislative committees for payment of properly made expenditures.

NOTE: Authority cited: Section 925.6(b), Government Code. Reference: Section 925.6(b), Government Code.

HISTORY

1. New section filed 3–22–90 as an emergency; operative 3–22–90 (Register 90, No. 14). Submitted to OAL for filing and printing only pursuant to Government Code section 925.6. A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 7–23–90.

§ 1145.1. Minimum Audit Requirements.

(a) All legislative claims submitted to the State Controller's Office will be audited to determine that:

(1) the expenditure is proper and legal;

(2) the claim is charged against the correct appropriation;

(3) invoices and documents are attached and supported;

(4) the claim is certified;

(5) the proper approvals are obtained; and

(6) in the event that payments are under contracts or purchase orders, copies are on file and the payments being made are in accordance with their terms.

(b) If a question develops in the audit of a claim, it will be returned to the submitting legislative body with a request for additional information or justification.

NOTE: Authority cited: Section 925.6(b), Government Code. Reference: Section 925.6(b), Government Code.

HISTORY

1. New section filed 3–22–90 as an emergency; operative 3–22–90 (Register 90, No. 14). Submitted to OAL for filing and printing only pursuant to Government Code section 925.6. A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 7–23–90.

§ 1145.2. Recordkeeping Requirements.

(a) All written contracts should be filed with the State Controller after execution.

(b) All accounting records, contracts and leases, claim schedules with supporting documentation, and purchase orders shall have a retention schedule of five years from end of the fiscal year in which the claim is filed.

(c) Records of claims kept by the Controller pursuant to these regulations shall be open to public inspection as permitted by the California Public Records Act (chapter 3.5 (commencing with section 6250) of division 7 of Title 1).

NOTE: Authority cited: Section 925.6(b), Government Code. Reference: Section 925.6(b), Government Code.

HISTORY

1. New section filed 3–22–90 as an emergency; operative 3–22–90 (Register 90, No. 14). Submitted to OAL for filing and printing only pursuant to Government Code section 925.6. A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 7–23–90.

Subchapter 8. Unclaimed Property Law

Article 1. General

§ 1150. Purpose and Statutory Authority.

The rules and regulations contained in this Subchapter are for the purpose of implementing provisions of the Unclaimed Property Law and are authorized by Code of Civil Procedure Section 1580.

NOTE: Authority cited: Section 1580, Code of Civil Procedure. Reference: Sections 1500–1582, Code of Civil Procedure.

HISTORY

1. New Subchapter 8 (Sections 1150–1176 not consecutive) filed 9–25–74 as an emergency; effective upon filing (Register 74, No. 39).
2. Repealer of Subchapter 8 (Sections 1150–1176, not consecutive) pursuant to Order for Preliminary Injunction (*Slettland and Kerner* vs. *Flournoy*) (Register 7, No. 5).
3. New Subchapter 8 (Sections 1150–1176, not consecutive) filed 8–15–75; effective thirtieth day thereafter (Register 75, No. 33).

§ 1151. Charges.

The term "charges" means any type of charge deducted by a holder (as defined in subdivision (f) of Code of Civil Procedure Section 1501) from property subject to the Unclaimed Property Law, including, but not limited to, service charges, handling charges, and administrative costs.

§ 1152. Property.

The term "property" means any property that is reportable to the State Controller under the Unclaimed Property Law, or would be reportable if charges had not been deducted therefrom.

§ 1153. Inactivity.

The term "inactivity" means non–occurrence of any of the events or acts described in (1), (2) or (3) of subdivision (a) or subdivision (b) of

Code of Civil Procedure Section 1513. A period of inactivity cannot be terminated by the unilateral act of the holder.

HISTORY

1. Amendment filed 6–15–76; effective thirtieth day thereafter (Register 76, No. 25).

§ 1154. Deducted.

The term "deducted" is synonymous with the terms "excluded" and "withheld."

Article 1.5. Electronic Funds Transfer of Cash Unclaimed Property

§ 1155.100. Definitions.

For purposes of this article, the following definitions apply:

(a) "Pretest" is a test to validate the holder's routing/transit number and bank account prior to the initiation of the first electronic funds transfer transmittal.

(b) "Reference Number" means the number unique to each holder's remittance that assists the State Controller's Office in matching the electronic funds transfer remittance to the holder's unclaimed property report.

(c) "Proof Of Transfer" means the documentation unique to each remitter that will prove that an electronic funds transfer was made to the State Controller's Office for payment of unclaimed property.

(d) "ACH" means Automated Clearing House Association.

NOTE: Authority cited: Section 1532(a), Code of Civil Procedure. Reference: Section 1532, Code of Civil Procedure.

HISTORY

1. New article 1.5 (sections 1155.100–1155.550) and section filed 3–26–98; operative 4–25–98 (Register 98, No. 13).

§ 1155.150. Participation in the Electronic Funds Transfer.

(a) Mandatory Participation

A holder of cash unclaimed property in an amount of twenty thousand dollars ($20,000.00) or more is required to deliver the cash unclaimed property to the State Controller's Office through the electronic funds transfer program.

(b) Voluntary Participation

A holder of cash unclaimed property in an amount less than twenty thousand dollars ($20,000.00) may voluntarily pay cash unclaimed property to the State Controller's Office through the electronic funds transfer program, however, participation in the electronic funds transfer process is not mandatory.

NOTE: Authority cited: Section 1532(a), Code of Civil Procedure. Reference: Section 1532(a), Code of Civil Procedure.

HISTORY

1. New section filed 3–26–98; operative 4–25–98 (Register 98, No. 13).

§ 1155.200. Liability for Civil Penalty of 2 Percent of the Amount of the Payment.

Holders remitting $20,000 or more of unclaimed property in any form other than electronic funds transfer shall be assessed a 2% penalty of the amount of the payment. A holder seeking relief from the penalty must file a written "Declaration Under Penalty of Perjury" statement espousing the conditions for failing to use one of the authorized electronic funds transfer processes available to them. The holder can be relieved of the penalties if the failure to remit via electronic funds transfer is due to reasonable cause and circumstances beyond the holder's control, and occurred notwithstanding the exercise of ordinary care and in the absence of willful neglect.

NOTE: Authority cited: Section 1532(a), Code of Civil Procedure. Reference: Section 1532(e), Code of Civil Procedure.

HISTORY

1. New section filed 3–26–98; operative 4–25–98 (Register 98, No. 13).

§ 1155.250. Electronic Funds Transfer Procedure.

(a) Before a holder can utilize electronic funds transfer, the holder must register with the State Controller's Office by completing an "Authorization Agreement for Electronic Funds Transfer" (Form SCO EFT–1 (03/98)), and provide the required account information to the State Controller's Office prior to initiating an electronic funds transfer payment.

(b) After a holder completes and returns an "Authorization Agreement For Electronic Funds Transfer," (Form SCO EFT–1 (03/98)), the holder should contact the State's data collector to conduct a pretest on ACH Debit transactions to validate accounting information.

(c) If a holder wishes to remit unclaimed property funds by Fedwire or International Funds Transfer, an "Authorization To Remit By Fedwire Or International Funds Transfer And Registration Form" (SCO EFT–3 (01/98)), must be completed and returned to the State Controller's Office. The State Controller's Office will review the request to determine if the holder has clearly established their inability to remit their unclaimed property through the Automated Clearing House Association (ACH Debit or ACH Credit). Remittance by Fedwire or International Funds Transfer may not be made without such approval. The holder is responsible for ensuring that remittance by an approved Fedwire or International Funds Transfer is made timely.

(d) ACH DEBIT and ACH CREDIT remitters of unclaimed property must provide the following information when remitting unclaimed property by electronic funds transfer:

- FEIN – This is the Federal Employer Identification Number.
- BRANCH NUMBER – For financial institutions this may be a branch or a section within a branch. If the remitter does not have a branch number, one will be supplied by the State Controller's Office specifically for the purposes of remitting via electronic funds transfer.
- REMITTER NAME.
- REMITTER ADDRESS.
- COMPANY NAME IF DIFFERENT THAN REMITTER NAME.
- UNCLAIMED PROPERTY REMITTER TYPE CODE – This code will identify the type of holder that is remitting unclaimed property.
- REMITTANCE TYPE CODE – This identifies the type of unclaimed property.
- REMITTANCE AMOUNT – This is the amount of the unclaimed property remittance.

(e) In addition to the information specified in (d) above, the following information must be provided in the registration and unclaimed property reporting process for ACH Debit transactions:

- BANK NAME
- BANK ACCOUNT NUMBER
- TRANSIT and ROUTING NUMBER
- TYPE OF ACCOUNT
- METHOD OF COMMUNICATING EFT REMITTANCES

(f) In addition to the information in (d) above, the following information must be provided in the unclaimed property reporting process for ACH Credit transactions:

- REMITTING instructions to your bank or other evidence of remittance that connects the remittance to the annual unclaimed property report.

NOTE: Authority cited: Sections 1532(a) and 1580, Code of Civil Procedure. Reference: Section 1532, Code of Civil Procedure.

HISTORY

1. New section filed 3–26–98; operative 4–25–98 (Register 98, No. 13).

§ 1155.300. Banking Costs.

(a) Banking costs incurred for an ACH credit shall be paid by the holder originating the credit.

(b) Banking costs incurred for remitting by Fedwire or International Funds Transfer are the responsibility of the holder.

NOTE: Authority cited: Sections 1532(a) and 1580, Code of Civil Procedure. Reference: Section 1532(f), Code of Civil Procedure.

HISTORY

1. New section filed 3–26–98; operative 4–25–98 (Register 98, No. 13).

§ 1155.350. ACH Debit.

(a) Payment Contact

The remitter must contact the State's data collector to remit funds by ACH debit. For information on the State's data collector contact the State Controller's Office, Electronic Funds Transfer Unit.

(b) Reference Number

"Reference number" is the number that will assist the holder in verifying that an ACH Debit remittance has been made.

The State's data collection service provides the reference number at the end of each completed ACH debit transaction. This reference number must be included in your annual unclaimed property report by entering it on the holder face sheet (UFS–1 (02/98)) or the remittance form (Form UP 27 (02/98)) that accompany your annual report.

NOTE: Authority cited: Sections 1532(a) and 1580, Code of Civil Procedure. Reference: Section 1532, Code of Civil Procedure.

HISTORY

1. New section filed 3–26–98; operative 4–25–98 (Register 98, No. 13).

§ 1155.400. ACH Credit.

(a) Payment Contact

To remit unclaimed property by ACH Credit, your financial institution must originate your payment by using the Cash Concentration or Disbursement plus Tax Payment Addendum (CCD+TXP) format adopted by the National Automated Clearing House Association and endorsed by the Federation of Tax Administrators.

(b) Account Number

Use the State Controller's bank account number when remitting unclaimed property by ACH credit.

(c) Reference Number

A copy of your proof of transfer must be attached to your annual unclaimed property report.

NOTE: Authority cited: Sections 1532(a) and 1580, Code of Civil Procedure. Reference: Section 1532, Code of Civil Procedure.

HISTORY

1. New section filed 3–26–98; operative 4–25–98 (Register 98, No. 13).

§ 1155.450. Refunds/Reimbursements.

Refunds or reimbursements to the holder will not be issued by electronic funds transfer.

NOTE: Authority cited: Sections 1532(a) and 1580, Code of Civil Procedure. Reference: Section 1532, Code of Civil Procedure.

HISTORY

1. New section filed 3–26–98; operative 4–25–98 (Register 98, No. 13).

§ 1155.500. Due Date.

If April 30 or October 31 fall on a Saturday, Sunday, or state recognized holiday, the due date will move to the next business day.

NOTE: Authority cited: Sections 1532(a) and 1580, Code of Civil Procedure. Reference: Section 1532, Code of Civil Procedure.

HISTORY

1. New section filed 3–26–98; operative 4–25–98 (Register 98, No. 13).

§ 1155.550. Proof of Transfer.

The holder has the responsibility of proving that an electronic funds transfer has taken place. Acceptable proof is the reference number for ACH Debit remitters or a copy of the transfer documentation for ACH Credit remitters.

NOTE: Authority cited: Sections 1532(a) and 1580, Code of Civil Procedure. Reference: Section 1532, Code of Civil Procedure.

HISTORY

1. New section filed 3–26–98; operative 4–25–98 (Register 98, No. 13).

Article 2. Charges Lawfully Withheld

§ 1160. Authority for Charges.

Charges shall not be deducted from property unless:

(a) Expressly permitted by provisions of the Unclaimed Property Law; and

(b) Authorized by a statute other than the Unclaimed Property Law or by a valid, enforceable contract.

§ 1161. Substantiation of Deductions.

If charges are deducted from property, a holder shall include or attach as part of the report filed pursuant to Code of Civil Procedure Section 1530:

(a) The citation of the statute or a copy of the form of contract authorizing such charges.

(b) The value or amount of each item of property, before any charges are deducted therefrom.

(c) The amount of charges deducted from each item and the date or dates on which such charges were deducted.

(d) Such other information or documentation as the State Controller may require after review of the report to substantiate the deduction of charges.

§ 1162. Non–Enforcement of Right.

Charges may not be deducted from property pursuant to a contract or statute if the holder would not have deducted such charges in the event the property had been claimed by the owner prior to being reported or remitted to the State Controller.

Article 3. Reasonable Charges

§ 1165. Substantiation of Reasonableness.

As to any item of property subject to subdivisions (a) or (b) of Code of Civil Procedure § 1513 on which charges have been deducted, other than demand deposits, a bank or financial organization shall include the following information as part of the report filed pursuant to Code of Civil Procedure § 1530:

(a) An estimate of the gross amount of income earned from use or investment of the property during the period of inactivity;

(b) A description and itemization of all costs directly incurred for purposes of maintaining and safeguarding the property during the period of inactivity and which would not have been incurred except for such inactivity; and

(c) Such other information or documentation pertaining to the reasonableness of the charges as the Controller may require after review of the report.

Article 4. Interest or Dividends

§ 1170. Authority for Discontinuance.

If payment of interest or dividends on property subject to subdivisions (a) or (b) of Code of Civil Procedure Section 1513 is discontinued at any time during the period of inactivity, the holder shall include or attach as part of the report filed pursuant to Code of Civil Procedure Section 1530:

(a) A copy of the form of a valid, enforceable contract which authorized such discontinuance of payment of interest or dividends; or

(b) The citation of the statute which authorized such discontinuance of payment of interest or dividends.

§ 1171. Non–Enforcement of Right.

A contract or statute shall not be considered as authorizing discontinuance of payment of interest or dividends if such payment would not have been discontinued, or would otherwise have accrued to the benefit of the owner, in the event the property had been claimed by the owner prior to being reported or remitted to the State Controller.

Article 4.5. Reporting and Delivering Property that Escheats Pursuant to Code of Civil Procedure Section 1516(b)

§ 1172.20. Delivery Dates.

(a) Certificates

(1) The holder of any intangible interest as evidenced by the stock records or membership records of the business association shall deliver a duplicate certificate to the State Controller's Office, Bureau of Unclaimed Property. The duplicate certificate shall be registered in the name of the: State Controller, State of California. The duplicate certificate replaces the original certificate issued to the original shareholder or member.

(2) For those certificates that can be transferred into the name of the State Controller, State of California, the delivery date is the date the certificate is registered in the name of the State Controller, State of California.

(3) Unless as defined in (b) below, certificates are not delivered unless registered in the name of the State Controller. The delivery date is the date the certificate is registered in the name of the State Controller, State of California.

(b) Foreign Securities And Securities That Cannot Be Remitted In Certificate Form

(1) Where the holder cannot remit securities in certificate form, the delivery date is the date the asset is credited to the account number of the State Controller, State of California maintained by a broker contracting with the State Controller's Office.

(2) The holder must obtain written permission from the State Controller's Office, Bureau of Unclaimed Property, prior to remitting with the method in §1172.20(b)(1), above.

(c) Open–end Mutual Funds

For open–end mutual fund securities maintained in book–entry form, the delivery date is the date the asset is credited to the fund account number for the State Controller.

(d) Certificates That Cannot Be Remitted In The Name Of the State Controller, State of California

For those securities where title cannot be transferred into the name of the State Controller, State of California, but a duplicate certificate is obtained, the delivery date is the postmark date the securities were mailed to the State Controller's Office.

NOTE: Authority cited: Section 1580, Code of Civil Procedure. Reference: Sections 1516 and 1530, Code of Civil Procedure.

HISTORY

1. New article 4.5 (sections 1172.20–1172.80) and section filed 12–31–97; operative 1–30–98 (Register 98, No. 1).

§ 1172.40. Interest Assessment.

Pursuant to Code of Civil Procedure section 1577, the State Controller's Office will assess interest against a person who fails to report or pay or deliver, within the time prescribed by the Unclaimed Property Laws, Code of Civil Procedure, Section 1500 et. seq., property that escheats to the state pursuant to Code of Civil Procedure section 1516(b).

NOTE: Authority cited: Section 1580, Code of Civil Procedure. Reference: Sections 1516 and 1577, Code of Civil Procedure.

HISTORY

1. New section filed 12–31–97; operative 1–30–98 (Register 98, No. 1).

§ 1172.60. Interest Assessment Date.

Except for life insurance companies, interest will be assessed from November 1 of the reporting year in which the property was due to the date of delivery of the property. For life insurance companies, interest will be assessed from May 1 of the reporting year in which the property was due to the date of delivery of the property.

NOTE: Authority cited: Section 1580, Code of Civil Procedure. Reference: Sections 1532 and 1577, Code of Civil Procedure.

HISTORY

1. New section filed 12–31–97; operative 1–30–98 (Register 98, No. 1).

§ 1172.80. Security Valuation.

(a) Securities listed on an established stock exchange will be valued, for the purpose of calculating interest, at the opening bid quote on the interest assessment date of the reporting year the property was due.

(b) Over–the–counter securities will be valued by the latest published quotation within two weeks preceding interest assessment date. If no quotation precedes the interest assessment date, the closest quotation subsequent to that date, but again within two weeks of that date, will be used. If there is no published quotation within that time frame, the stock will be valued as a privately held stock.

(c) Privately–Held securities will be valued using the Internal Revenue Service Revenue Ruling 59–60 (1959), hereby incorporated by reference.

(d) There will be no assessment for securities for which the State Controller's Office is unable to obtain a value or estimated value.

NOTE: Authority cited: Section 1580, Code of Civil Procedure. Reference: Section 1577, Code of Civil Procedure.

HISTORY

1. New section filed 12–31–97; operative 1–30–98 (Register 98, No. 1).

Article 4.7. Reasonable Cause

§ 1172.90. Reasonable Cause — Defined.

(a) If any person fails to report or pay or deliver unclaimed property within the time prescribed by the Unclaimed Property Law (Civil Code of Procedure Section 1500 et seq.), the assessment of interest is mandatory unless there is a showing of "reasonable cause" for the delay.

(b) "Reasonable cause" means the exercise of ordinary business care and prudence. The following specific causes for failure to report or pay or deliver unclaimed property within the time prescribed by law will be accepted as reasonable.

(1) Where in the absence of willful neglect, the failure was due to circumstances beyond the holder's control.

(2) Where the delay or failure to file was due to erroneous information given to the holder of unclaimed property by an employee of the Controller's Office.

(c) Generally, the failure to timely report or pay or deliver unclaimed property is not excused by reliance on an agent and such reliance is not reasonable cause for late reporting, payment or delivery.

NOTE: Authority cited: Section 1580, Code of Civil Procedure. Reference: Section 1577, Code of Civil Procedure.

HISTORY

1. New article 4.7 (sections 1172.90–1172.92) and section filed 7–28–2004; operative 8–27–2004 (Register 2004, No. 31).

§ 1172.92. Burden of Proof.

(a) The holder of unclaimed property has the burden of proving reasonable cause.

(b) The holder of unclaimed property shall set forth any claim of reasonable cause for a delinquent reporting, payment or delivery in an affidavit or declaration under penalty of perjury.

NOTE: Authority cited: Section 1580, Code of Civil Procedure. Reference: Section 1577, Code of Civil Procedure.

HISTORY

1. New section filed 7–28–2004; operative 8–27–2004 (Register 2004, No. 31).

Article 5. Miscellaneous

§ 1173. Report of No Reportable Property.

On written request, a holder who does not have property which is reportable under the law shall report that fact.

NOTE: Authority cited: Section 1580, Code of Civil Procedure. Reference: Sections 1500–1582, Code of Civil Procedure.

HISTORY

1. New Section filed 6–15–76; effective thirtieth day thereafter (Register 76, No. 25).

§ 1174. Information Contained in Report.

In addition to the information required by Section 1530 of the Code of Civil Procedure and by other rules of this Subchapter, the report filed pursuant to Section 1530 shall contain the following information on a form prescribed by the State Controller:

(a) The type of organization filing the report (corporation, partnership, etc.).

(b) If the report is filed by a corporation:

(1) the date of incorporation;

(2) the state of incorporation; and

(3) the state in which the corporation has its principal place of business.

(c) The date that the organization filing the report commenced operations.

(d) If the report is prepared by an agent of the holder (for example, a transfer agent), the name and address of the agent.

(e) The name and title of the person who actually prepared, or was directly responsible for preparing, the report.

(f) If the social security number or taxpayer identification number of the owner is contained in the records of the holder, the holder shall list such social security or taxpayer identification number along with the items of property reported. Upon written application of a holder to the State Controller, and for good cause shown, the State Controller, in writing, may relieve the holder of the obligation to report such social security or taxpayer identification numbers.

NOTE: Authority cited: Sections 1530 (b) (6) and 1580, Code of Civil Procedure. Reference: Section 1500, Code of Civil Procedure.

HISTORY

1. New subsection (f) filed 12–22–87; operative 1–21–88 (Register 88, No. 2).

§ 1175. Records.

Any person or holder shall retain all records pertaining to property for a period of seven (7) years after such property is reported, or would have been reported except for the deduction of charges, to the State Controller. Such records shall contain the information required by Section 1530 of the Code of Civil Procedure and this Subchapter. The State Controller may, in writing, consent to the destruction of any such records prior to expiration of the above period.

§ 1176. States Without Unclaimed Property Laws.

NOTE: Authority cited: Section 1580, Code of Civil Procedure. Reference: Section 1500, Code of Civil Procedure.

HISTORY

1. Repealer filed 12–22–87; operative 1–21–88 (Register 88, No.2).

§ 1180. Inapplicability of Articles.

Articles 2, 3 and 4 of Subchapter 8, do not apply to property which is first required to be reported after January 1, 1976.

NOTE: Authority cited: Section 1580, Code of Civil Procedure. Reference: Sections 1500–1582, Code of Civil Procedure.

HISTORY

1. New section filed 6–15–76; effective thirtieth day thereafter (Register 76, No. 25).

Subchapter 9. Rules and Regulations Relating to Trial Court Recordkeeping, Accounting and Reporting

Article 1. Definitions

§ 1180.1. Specific Terms.

Court operations: The term "court operations" is defined in Government Code section 77003 and the California Rule of Court 810 as adopted by the Judicial Council of California. For purposes of these regulations, "court operations" will have the same definition.

Appropriations: A legal authorization granted by a legislative body to make expenditures and to incur obligations for specific purposes.

For purposes of the Brown–Presley Trial Court Funding Act, appropriations represent year–end adjusted appropriations which are supported by actual expenditures and encumbrances.

Encumbrances: Commitments related to unperformed (executory) contracts for goods and services. Used in budgeting, encumbrances are not expenditures or liabilities according to Generally Accepted Accounting Principles, but represent the estimated amount of expenditures ultimately to result if unperformed contracts in process are completed.

NOTE: Authority cited: Section 77205, Government Code. Reference: Section 77205, Government Code.

HISTORY

1. New section filed 3–19–90 pursuant to Government Code section 77205(d); operative 4–18–90 (Register 90, No. 15).

2. Editorial correction of printing error in subchapter heading and second paragraph (Register 92, No. 10).

Article 2. Accounting

§ 1180.2. Specific Procedures.

The use of a Special Revenue Fund to account for the receipt of Trial Court Block Grants and the expenditures relating to court operations is recommended by the State Controller's Office. Counties may utilize alternative procedures as outlined in Section 8.39 of the "Accounting Standards and Procedures for Counties Manual" published by the Office of State Controller. Option counties shall establish a new account within the Intergovernmental Revenue classification entitled "State–Trial Courts" with four sub–accounts entitled "Block Grant," "Salary Grant," "Super Block Grant," and "Trial Court Improvement Fund."

Trial Court Improvement Fund expenditures must be clearly identified in order to satisfy grant requirements prescribed by the Administrative Office of the Courts.

Interest earned from Trial Court Improvement Fund Grants made pursuant to Government Code Section 77207 shall be accounted for under guidelines established by the Administrative Office of the Courts. Interest earned from all other trial court funding grants made pursuant to Government Code Sections 68206 and 77200 must be calculated and allocated only if the total of such grants plus interest will exceed the total cost of court operations for a fiscal year. In such case, the excess must be expended on court operations in the subsequent year. The calculation of interest shall be consistent with the method used in allocating interest to other county funds.

NOTE: Authority cited: Section 77205, Government Code. Reference: Section 77205, Government Code.

HISTORY

1. New section filed 3–19–90 pursuant to Government Code section 77205(d); operative 4–18–90 (Register 90, No. 15).

2. Amendment of last paragraph filed 7–17–91; operative 8–16–91. Submitted to OAL for printing only and exempt from OAL review per Government Code section 77205 (Register 92, No. 10).

Article 3. Chart of Accounts

The following chart of accounts is recommended for use by option counties in reporting court revenues and expenditures to the Controller. This new chart of accounts correlates directly with the report formats prescribed by the Controller. It contains the same object accounts presented in Chapters 6 and 7 of the Controller's "Accounting Standards and Procedures for Counties Manual" and allowable "court operation" expenditures listed in Judicial Council's California Rule of Court 810. Option counties may continue to use their existing chart of accounts to record activities relating to the Trial Court Funding Program, however, it must be expanded to include the revenue accounts and sub–accounts specified in Article 2, Section 1180.2.

§ 1180.3. Revenues.

INTERGOVERNMENTAL REVENUES
State–Trial Courts:
Block grant
Salary grant
Super block grant
Trial court improvement fund
State–Other:
Court reimbursements
Other
Revenue from Use of Property and Money:
Interest
Other Financing Sources:
Fees and Fines
Sale of fixed assets
Operating transfers–in
Other

NOTE: Authority cited: Section 77205, Government Code. Reference: Section 77205, Government Code.

HISTORY

1. New section filed 3–19–90 pursuant to Government Code section 77205(d); operative 4–18–90 (Register 90, No. 15).
2. Amendment of Article 3. Chart of Accounts filed 7–17–91; operative 8–16–91. Submitted to OAL for printing only and exempt from OAL review per Government Code section 77205 (Register 92, No. 10).

§ 1180.4. Block Grant Expenditures.

SALARIES AND EMPLOYEE BENEFITS
Salaries and Wages
Retirement
Employees Group Insurance
Worker's Compensation Insurance
Other Benefits
SERVICES AND SUPPLIES
Communications
Jury and Witness Expense:
Court–appointed expert witness fees
Jury expenses
Maintenance–Equipment:
Maintenance of office equipment
Maintenance–Facilities:
*Minor remodeling costs of courthouse and supporting facilities
Security and maintenance of court facilities including janitorial service
Memberships:
Memberships and subscriptions
Statutory multi–district judges' association expense
Office Expense:
Office supplies
Postage
Printing
Professional dues
Other:
Collective bargaining costs under the Meyers–Milias–Brown Act
Expenses of assigned judges
Micrographics
Research, planning, and program coordination expenses
Small claims advisor program costs
Professional and Specialized Services:
All verbatim reporting services including contract reporters and courtroom monitors, transcription services and transcripts ordered for use of the court
Collections
Contract service operations
Court–appointed counsel (juvenile dependency)
Court information services
Court legal expenses
Court ordered forensic evaluations
Data processing operations, computer programs and systems
Family court service program
Interpreters and translators
Other professional services
Publications and Legal Notices:
Books, publications, and training materials
Publications and legal notices, by the court
Rents and Leases–Equipment:
Equipment and furnishing–leased or rented
Special Departmental Expense:
Center for judicial education and research
National judicial college
National center for state courts
Judicial and non–judicial training
Other
Travel and Transportation:
Vehicle use
EQUIPMENT
Equipment and Furnishing–Purchased
INDIRECT COSTS
Accounting:
Auditor–Controller charges
Disbursements
Payroll
Other accounting duties related to court operations
Administrative:
Budget preparation/execution
Grant coordination
Auxiliary Services:
Equipment use
*Minor remodeling costs of courthouse and supporting facilities
Purchasing
Record retention and destruction
Security
Stores
Treasury service
Utilities
Others
Collections
Communications:
Messenger service
Data Processing
Financial:
Financial hearing officer
Insurance:
Facility insurance
Liability and bonding insurance
Maintenance:
Maintenance of court facilities, including janitorial services
Parking lot maintenance
Personnel Services:
Personnel related costs
Recruiting
Training
ADDITIONAL ALLOWABLE COSTS FOR COUNTIES HAVING POPULATION OF 350,000 OR LESS AND WHOSE BLOCK GRANT EXCEEDS THE ADJUSTED 1987–88 FUNDING LEVEL FOR TRIAL COURTS
**Probation Department — Costs attributable to probation and pretrial release services:
Salaries and Employee Benefits
Services and Supplies
Indirect Costs
**Indigent Criminal Defense — Costs attributable from public defender and others:
Salaries and Employees Benefits

Services and Supplies
Indirect Costs
**Pretrial Release Services — Costs attributable from Sheriff Department and others:
Salaries and Employee Benefits
Services and Supplies
Indirect Costs

*Up to the amount established by the county auditor-controller, but not exceeding $50,000.

**Use the same object and sub-object accounts listed under "block grant" expenditures."

NOTE: Authority cited: Section 77205, Government Code. Reference: Section 77205, Government Code.

HISTORY

1. New section filed 3-19-90 pursuant to Government Code section 77205(d); operative 4-18-90 (Register 90, No. 15).
2. Amendment filed 7-17-91; operative 8-16-91. Submitted to OAL for printing only and exempt from OAL review per Government Code section 77205 (Register 92, No. 10).
3. Editorial correction of printing errors (Register 92, No. 10).
4. Editorial correction of History Note 2 (Register 95, No. 6).

§ 1180.5. Trial Court Improvement Fund Expenditures (For Building Construction Only).

**SALARIES AND EMPLOYEE BENEFITS
**SERVICES AND SUPPLIES
OTHER CHARGES
FIXED ASSETS
OTHER FINANCING USES
INDIRECT COSTS
Accounting
Administrative:
Bid/Estimate
Auxiliary Services:
Advertising
Equipment Use
Purchasing/Procurement
Security
Utilities
Communications
Data Processing
Financial
Insurance:
Facility insurance
Liability and bonding insurance
Maintenance-Equipment
Other Project Expenses:
Mobilization, Assembly, Move-Out Costs
Spoilage, loss, and theft
Trailer
Warehouse costs
Yarding and Hauling
Other Costs
Personnel Services
Professional and Specialized Services:
Legal Costs
Labor — Salaries and Benefits
Management Expenses

**Use the same object and sub-object accounts listed under "block grant expenditures."

NOTE: Authority cited: Section 77205, Government Code. Reference: Section 77205, Government Code.

HISTORY

1. New section filed 3-19-90 pursuant to Government Code section 77205(d); operative 4-18-90 (Register 90, No. 15).
2. Editorial correction of printing errors (Register 92, No. 10).

Article 4. Maintenance of Effort

Government Code section 77204 requires option counties to maintain levels of effort in support (maintenance of effort) of court operations. Beginning with the 1989-90 fiscal year, for maintenance of effort purposes, the first full fiscal year of county participation in the Trial Court Funding Program will be considered the base year. Appropriations for the base year will be the basis for future appropriations for court operations. Each county must also provide at least the same proportionate level of indirect services to the court as was provided in the 1986-87 fiscal year. Option counties are required to maintain a maintenance of effort level on a county-wide basis reflecting total appropriate for the entire trial court system.

For maintenance of effort purposes, option counties with a population of 350,000 or less will include appropriations for probation services, indigent criminal defense and pretrial release services to the extent the block grant for a given fiscal year exceeds the 1987-88 funding level for the trial courts in that county, as adjusted by the current consumer price index.

§ 1180.6. Base Year Requirements.

(a) Beginning with the 1989-90 fiscal year, an option county shall appropriate and authorize for expenditure each fiscal year an amount not less than the amount appropriated for court operations in the first full fiscal year in which a county became an option county, as adjusted by the percentage provided in Government Code section 77201.

(b) The county shall provide the trial courts with at least the same proportionate level of indirect services as was provided in the 1986-87 fiscal year. The OMB Circular A-87 (County Cost Plan) may be utilized in determining the indirect services level for the 1986-87 fiscal year.

(c) The county shall fulfill its shared financial and other obligation pursuant to Government Code section 68073.

(d) The county shall provide for judicial arbitration and court mediation and conciliation services at a level at least proportionate to the number of cases filed subject to such programs in the 1986-87 fiscal year.

NOTE: Authority cited: Section 77205, Government Code. Reference: Section 77205, Government Code.

HISTORY

1. New section filed 3-19-90 pursuant to Government Code section 77205(d); operative 4-18-90 (Register 90, No. 15).

Article 5. Reporting

§ 1180.7. Annual Reporting.

Each option county shall submit to the Controller for each full fiscal year that the county participates in the Trial Court Funding Program, a report of all revenues including fees, fines and forfeitures, and all expenditures in the form and manner prescribed by the State Controller. The report prepared by the appropriate county department/officer shall be certified by the county auditor of the option county. This report must be submitted to the Controller on or before the October 1 following the fiscal year being reported.

This annual report shall contain detailed data for individual court districts and may include supplementary schedules as deemed necessary by the Controller. This detailed data will be combined to reflect total revenues and expenditures for the county trial court system.

NOTE: Authority cited: Section 77205, Government Code. Reference: Section 77205, Government Code.

HISTORY

1. New section filed 3-19-90 pursuant to Government Code section 77205(d); operative 4-18-90 (Register 90, No. 15).

§ 1180.8. Super Block Grant.

A "super block grant" may be paid to option counties based upon the number of new judgeships, in excess of 10, a county is authorized by chapter 1211 of the statutes of 1987. In addition, option counties receiving new judgeships authorized on or after January 1, 1990 are also eligible to receive a super block grant. The super block grant is based upon year-end adjusted appropriate for court operations and should result in

a grant payment greater than the standard annual grant of $212,000. The eligible county will receive the super block grant progressively reduced over four years as provided under Government Code section 77200.

Option counties receiving judgeships in excess of 10 new judgeships authorized by chapter 1211 of the statues of 1987, shall provide the Controller with a report of the counties' average quarterly appropriation for court operations for the 1987–88 fiscal year. This report shall be used by the Controller in determining the "super block grant" for affected judgeships.

For each new judgeship authorized by statutes taking effect after January 1, 1990, option counties shall submit a report of average quarterly appropriations for the fiscal year prior to the effective date of the statute authorizing the new judgeships. The Controller shall use this report to determine the "superblock grant" for the newly authorized judgeships.

NOTE: Authority cited: Section 77205, Government Code. Reference: Section 77205, Government Code.

HISTORY

1. New section filed 3–19–90 pursuant to Government Code section 77205(d); operative 4–18–90 (Register 90, No. 15).

§ 1180.9. No and Low Property Tax Cities.

Some option counties participating in the Trial Court Funding Program will be required to shift a portion of the county's share of property taxes to certain qualifying cities. Section 97.35 of the Revenue and Taxation Code provides that most qualifying cities will receive 7% of the property tax revenues generated within their boundaries, phased in over a 7 year period. The shift begins in the 1989–90 fiscal year. Option counties will be required to submit to the State Controller a report of "eligible cities" as defined under Revenue and Taxation Code section 11005(b)(1)(B)(iv).

NOTE: Authority cited: Section 77205, Government Code. Reference: Section 77205, Government Code.

HISTORY

1. New section filed 3–19–90 pursuant to Government Code section 77205(d); operative 4–18–90 (Register 90, No. 15).
2. Editorial correction of printing error (Register 92, No. 10).

Article 6. Recordkeeping

§ 1180.10. Requirements.

All accounting records, source documents and resolutions relating to the Brown–Presley Trial Court Funding Act are required to be maintained for audit purposes by the option county for at least three fiscal years following the first fiscal year of participation. This section shall not supersede other statutory provisions requiring a longer retention period. Agreements between a county and a city for the issuing or processing of citations as allowed under Penal Code section 1463(a)(3) are required to be maintained by the county for at least three years after the expiration of any such agreement and a copy must be filed with the State Controller.

NOTE: Authority cited: Section 77205, Government Code. Reference: Section 77205, Government Code.

HISTORY

1. New section filed 3–19–90 pursuant to Government Code section 77205(d); operative 4–18–90 (Register 90, No. 15).

* * *

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Title 2. Administration

Division 2. Financial Operations

Chapter 2.5. Commission on State Mandates

Vol. 2

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Chapter 2.5. Commission on State Mandates

Article 1. General

§ 1181. Delegation of Certain Functions; Executive Director Appeals.

(a) Whenever it is stated in these rules that the "commission" may or shall exercise or discharge any power, duty, purpose, function, or jurisdiction, the Commission on State Mandates specifically has reserved the same for its own exclusive action.

(b) Whenever it is stated the "executive director" may or shall exercise or discharge any power, duty, purpose, function, or jurisdiction, or it is not expressly stated that the commission itself shall so act, the executive director of the commission has the authority to act thereon.

(c) Any party in interest may appeal to the commission for review of the actions and decisions of the executive director.

(1) The appellant shall submit the appeal in writing within ten (10) days of first being served written notice of the executive director's action or decision.

(2) The appellant shall submit an original and one (1) copy of the appeal to the executive director and serve a copy on the parties and interested parties on the mailing list described in Section 1181.2 of these regulations.

(3) The appeal shall explain the basis for the appeal, state the action being requested of the commission, and include all facts and materials the applicant believes are relevant to the appeal.

(4) The executive director shall schedule the appeal for hearing and vote by the commission as soon as practicable following receipt of the appeal.

(5) Other parties may submit comments to the commission on the appeal.

(6) The commission shall determine whether to uphold the executive director's decision by a majority vote of the members present. The decision shall be final and not subject to reconsideration.

(7) The executive director shall notify the appellant in writing within ten (10) days of the commission's decision.

(d) Nothing herein prohibits the executive director from delegating to his/her subordinates as provided in Government Code section 18572.

NOTE: Authority cited: Sections 17530 and 17531, Government Code. Reference: Section 17530, Government Code.

HISTORY

1. New Chapter 2.5 (Articles 1–4 and 6–8, Sections 1181–1189.5, not consecutive) filed 7–8–85; effective thirtieth day thereafter. Submitted to OAL for filing and printing only pursuant to Government Code Section 17517(g) (Register 85, No. 28). For history of former Chapter 2.5, see Registers 80, No. 17 and 77, No. 2).
2. Amendment of subsection (d) filed 9–6–2005; operative 9–6–2005. Exempt from OAL review and submitted to OAL for printing only pursuant to Government Code section 17527(g) (Register 2005, No. 36).
3. Amendment of section heading and new subsections (c)(1)–(7) filed 11–16–2005; operative 12–16–2005. Submitted to OAL for printing only (Register 2005, No. 46).

§ 1181.1. Definitions.

Unless otherwise indicated, the definitions in this chapter and those found in Government Code sections 17510 through 17524 apply to Articles 1, 2, 3, 4.5, 5, 6, 7, 8, and 8.5 of this chapter:

(a) "Affected state agency" means a state department or agency that is responsible, in whole or in part, for implementation, enforcement, or administration of any statute(s) or executive order(s) that is the subject of a claim.

(b) "Amendment" means the addition of new allegations based on new statutes or executive orders to an existing test claim. The addition or substitution of parties and supporting declarations based on the original statutes or executive orders alleged in an existing test claim is not an "amendment."

(c) "Claim" means test claim or incorrect reduction claim.

(d) "Claimant" means the local agency or school district filing a test claim or incorrect reduction claim.

(e) "Commission staff" means the executive director, legal counsel, or other commission employee authorized by the commission or the executive director to represent the commission on a specific claim or request, or to receive filings at the commission office.

(f) "Completed" means that all requirements for filing a claim, proposed parameters and guidelines, request to amend parameters and guidelines, request for reconsideration, or request to review claiming instructions have been satisfied by the claimant or requestor.

(g) "Filing date" means the date of delivery to the commission's office during normal business hours. For purposes of meeting the filing deadlines required by statute, the filing is timely if:

(1) the filing was mailed by certified or express mail or a common carrier promising overnight delivery, and

(2) the time for its filing had not expired on the date of its mailing by certified or express mail as shown on the postal receipt or postmark, or the date of its delivery to a common carrier promising overnight delivery as shown on the carrier's receipt.

(h) "Good cause" may include, but is not limited to, the following factors: (1) the number and complexity of the issues raised; (2) a party is new to the case, or other counsel is needed; (3) the individual responsible for preparing the document has other time–limited commitments during the affected period; (4) the individual responsible for appearing at the hearing has other time–limited commitments; (5) illness of a party; (6) a personal emergency; (7) a planned vacation that cannot reasonably be rearranged; (8) a pending public records request; and (9) any other factor, which in the context of a particular claim constitutes good cause. Good cause may be established by a specific showing of other obligations involving deadlines that as a practical matter preclude filing the document by the due date without impairing quality.

(i) "Incorrect reduction claim" means a claim alleging that the Office of State Controller incorrectly reduced the reimbursement claim of a local agency or school district.

(j) "Informational proceeding" means any hearing designed to gather and assess information to assist the commission in formulating policies, informing the public of commission actions, or obtaining public comment and opinion.

(k) "Interested party" means a local agency or school district; an organization or association representing local agencies or school districts; or a person authorized to represent a local agency or school district, having an interest in a specific claim or request other than the claimant.

(*l*) "Interested person" means any individual, local agency, school district, state agency, corporation, partnership, association, or other type of entity, having an interest in the activities of the commission.

(m) "Party" means the test claimant, the Department of Finance, Office of State Controller, or affected state agency.

(n) "Rulemaking proceeding" means any hearing designed to adopt, amend, or repeal any rule, regulation, or standard of general application that implements, interprets, or makes specific any provision of Title 2, Division 4, Part 7, beginning with Government Code section 17500 or any other statute enforced or administered by the commission.

(o) "Statewide cost estimate" means the approximate sum of money that local agencies or school districts may have incurred to implement a state–mandated program or any increased level of service of an existing mandated program. A statewide cost estimate submitted by a test claimant shall be an estimate of the first full fiscal year of actual or estimated costs based on the statutes and executive orders alleged in a test claim, except as provided in Government Code section 17557.1, subdivision (a). A statewide cost estimate adopted by the commission shall be an estimate based on the commission's determination of a test claim for the initial period of reimbursement to be reported to the Legislature.

(p) "Statewide estimate of costs" is based on a reasonable reimbursement methodology proposed by a test claimant and the Department of Finance, adopted by the commission, and reported to the Legislature pursuant to Government Code section 17557.2.

(q) "Teleconference" means a conference of individuals in different locations, connected by electronic means, through audio, video, or both.

(r) "Written material" shall include, but is not limited to, requests and correspondence on substantive and procedural matters, e.g., informal conferences, prehearing conferences, postponements of hearings, extensions of due dates for submission of opposition, recommendations, comments, reasonable reimbursement methodologies, statewide estimates of costs, supplemental declarations, stipulations, applications for subpoenas and subpoenas duces tecum, witness lists, etc. Test claims, incorrect reduction claims, or amendments thereto, are not considered written material.

NOTE: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections 11123, 17516–17521, 17527(c), 17529, 17530, 17531, 17532, 17551, 17553, 17557, 17557.1, 17557.2 and 17600, Government Code.

HISTORY

1. New section filed 7–23–96; operative 7–23–96. Submitted to OAL for printing only (Register 96, No. 30).
2. Amendment filed 9–13–99; operative 9–13–99. Submitted to OAL for printing only pursuant to Government Code section 17527 (Register 99, No. 38).
3. Amendment filed 4–21–2003; operative 4–21–2003. Submitted to OAL for printing only pursuant to Government Code section 17527(g) (Register 2003, No. 17).
4. New subsection (o) and subsection relettering filed 2–23–2004; operative 2–23–2004. Submitted to OAL for printing only (Register 2004, No. 9).
5. Amendment of section and NOTE filed 9–6–2005; operative 9–6–2005. Exempt from OAL review and submitted to OAL for printing only pursuant to Government Code section 17527(g) (Register 2005, No. 36).
6. Amendment of subsection (o), new subsection (p), subsection relettering and amendment of newly designated subsection (r) and NOTE filed 4–24–2008; operative 4–24–2008 pursuant to Government Code section 11343.4. Submitted to OAL for printing only (Register 2008, No. 17).

§ 1181.2. Filing and Service of Written Materials.

(a) For each completed claim, commission staff shall promulgate and make available a mailing list of the names, addresses, phone numbers, and facsimile phone numbers of the parties and interested parties who have requested inclusion on the mailing list for a specific claim. The mailing list shall include only one representative for each party or interested party. This mailing list shall be provided by commission staff to the parties and interested parties to the claim and to any person who requests a copy.

(b) Unless otherwise provided in this chapter, when a party or interested party files with commission staff any written material concerning a claim, it shall simultaneously serve a copy of the written material on the other parties and interested parties to the claim identified on the mailing list provided by commission staff. A proof of service in compliance with Code of Civil Procedure section 417.10 and following shall be included with any written material filed with commission staff.

(c) Service of any written material may be effected by delivering or simultaneously mailing a copy of the document by first–class mail to commission staff and each party and interested party whose name is on the commission's mailing list. Delivery may be made by handing a copy of the document to the addressee or leaving it in a place where the addressee may reasonably be expected to obtain actual and timely receipt. Service by mail is complete when the document is deposited in the mail. The executive director may require more expeditious service or a particular form of service in appropriate circumstances.

(d) With the prior consent of the party or interested party being served or at the direction of the executive director, service may be made to commission staff by facsimile transmission, by electronic mail (e–mail), or by other electronic media. Such service is complete upon successful transmission or notification to the mailing list described in subdivision (a) of this Section that written material has been filed. Following successful transmission or notification, commission staff may notify all parties and interested parties that written material may be viewed on the commission's website.

(e) For the following new filings received by the commission, the executive director shall issue sequential case numbers, by fiscal year, as follows:

1. Test Claim (TC)
2. Incorrect Reduction Claim (I)
3. Request to Amend Parameters and Guidelines (PGA)
4. Joint Request for Reasonable Reimbursement Methodology (RRM)
5. Request for Review of Claiming Instructions (CI)
6. Request for Removal or Inclusion in State Mandates Apportionment System (SMAS)
7. Joint Request for Legislatively Determined Mandate (LDM)

NOTE: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections 17530, 17551, 17553(a), 17557, 17557.1, 17571, 17573(b), 17573(g), 17574(c) and 17615.1, Government Code.

HISTORY

1. New section filed 7–23–96; operative 7–23–96. Submitted to OAL for printing only (Register 96, No. 30).
2. Amendment of subsections (a) and (b) filed 9–13–99; operative 9–13–99. Submitted to OAL for printing only pursuant to Government Code section 17527 (Register 99, No. 38).
3. Amendment of subsection (d) filed 3–6–2001; operative 4–5–2001. Submitted to OAL for printing only pursuant to Government Code section 17527(g) (Register 2001, No. 10).
4. Amendment of section heading and section filed 9–6–2005; operative 9–6–2005. Exempt from OAL review and submitted to OAL for printing only pursuant to Government Code section 17527(g) (Register 2005, No. 36).
5. New subsections (e)–(e)7. and amendment of NOTE filed 4–24–2008; operative 4–24–2008 pursuant to Government Code section 11343.4. Submitted to OAL for printing only (Register 2008, No. 17).

§ 1181.3. Submissions of Written Materials in Other Media.

To facilitate the timely hearing of test claims, parameters and guidelines, reasonable reimbursement methodologies, statewide cost estimates, and statewide estimates of costs, a test claimant, state agency, or interested party may electronically submit the original text of a document filed with commission staff by saving it in an Adobe Acrobat PDF file and submitting it by e–mail or other electronic media.

NOTE: Authority cited: Sections 17527(g) and 17553, Government Code. Reference: Sections 17530, 17553, 17554, 17557, 17557.1 and 17557.2, Government Code.

HISTORY

1. New section filed 7–23–96; operative 7–23–96. Submitted to OAL for printing only (Register 96, No. 30).
2. Amendment filed 3–6–2001; operative 4–5–2001. Submitted to OAL for printing only pursuant to Government Code section 17527(g) (Register 2001, No. 10).
3. Amendment filed 9–6–2005; operative 9–6–2005. Exempt from OAL review and submitted to OAL for printing only pursuant to Government Code section 17527(g) (Register 2005, No. 36).
4. Amendment of section and NOTE filed 4–24–2008; operative 4–24–2008 pursuant to Government Code section 11343.4. Submitted to OAL for printing only (Register 2008, No. 17).

§ 1181.4. Designees and Officers.

(a) If the Controller, the Treasurer, the Director of the Department of Finance, or the Director of the Office of Planning and Research designates a deputy to represent him or her, that designee may continue to serve on the commission until the designation is revoked or replaced by the current constitutional officer or director.

(b) Commission members as defined by Government Code Section 17525 shall be officers. Duties of Officers:

(1) Duties of Chairperson. The chairperson shall preside over all meetings of the commission at which he or she is present. He or she has all the rights and responsibilities of the other members. He or she has the right to introduce motions or proposals and to speak and vote on them while he or she is presiding. The chairperson has the power to appoint one or more members of the commission as a subcommittee to investigate and report to the commission on any matter within the scope of the purposes of the commission or to form advisory groups to assist the commission or its subcommittees in fulfilling their purposes.

(2) Duties of Vice Chairperson. The vice chairperson shall preside over all meetings of the commission at which the chairperson is not pres-

ent. He or she has all the rights and responsibilities of the other members. He or she has the right to introduce motions or proposals and to speak and vote on them while he or she is presiding.

(c) Time of Election. The commission shall elect a chairperson and vice chairperson at the January meeting of each year. In the calendar year following the statewide election of constitutional officers, the commission may postpone its election. The commission may authorize the executive director to conduct the election portion of its meeting.

(d) Vacancy. If an office (chairperson or vice-chairperson) held by a public member or local elected official becomes vacant, an election shall be conducted as soon as practicable to fill the vacant office.

(e) When Election Takes Effect. An election shall take effect immediately.

NOTE: Authority cited: Sections 17500 and 17527(g), Government Code. Reference: Sections 7.5, 7.6, 7.9 and 17528, Government Code.

HISTORY

1. New section filed 11-13-98; operative 11-13-98 pursuant to Government Code section 11343.4(d) (Register 98, No. 46).
2. Amendment of section heading, repealer and new subsection (a), amendment of subsections (b) and (d) and amendment of NOTE filed 8-23-2006; operative 8-23-2006. Exempt for OAL review and submitted to OAL for printing only pursuant to Government Code section 17527(g) (Register 2006, No. 34).

Article 2. Commission Meetings

§ 1182. Quorum and Voting Requirements.

(a) A majority of the existing membership of the commission shall constitute a quorum.

(b) All actions of the commission, with the exception of Requests to Reconsider and to Amend a Prior Final Decision as provided in sections 1188.4 and 1188.5, shall require the affirmative vote of at least a majority of the existing membership of the commission.

(c) In the case of a tie vote, the commission may:

(1) Re-hear the claim when the membership of the commission changes or when an abstaining member completes review of the administrative record;

(2) Assign the claim to a hearing panel or to a hearing officer, pursuant to section 1187.2 et seq., for hearing and preparation of a proposed statement of decision for consideration by the commission. If the commission assigns the claim to a hearing panel, the selection of the hearing panel shall be by lot, or other means of random and impartial selection; or

(3) Direct staff to prepare a proposed statement of decision based on the final staff analysis and evidentiary hearing for consideration by the commission.

(d) A majority of the votes cast by those members on a hearing panel assigned pursuant to sections 1187.2 and 1186.62 is required for the approval of a preliminary decision on claims and applications for a finding of significant financial distress.

NOTE: Authority cited: Section 17527(g), Government Code. Reference: Sections 17525, 17527(c) and 17532, Government Code; and Section 17000.6, Welfare and Institutions Code.

HISTORY

1. Amendment filed 4-29-87; operative 5-29-87 (Register 87, No. 18).
2. Amendment of section heading, repealer and new section filed, and amendment of NOTE filed 2-18-97; operative 2-18-97 pursuant to Government Code section 11343.4(d). Submitted to OAL for printing only pursuant to Government Code section 17527(g) (Register 97, No. 8).
3. Amendment of subsection (b) and new subsections (c)-(d) filed 1-27-2000; operative 1-27-2000. Submitted to OAL for printing only (Register 2000, No. 4).

§ 1182.1. Notice and Agenda.

(a) Time and distribution. Notices and agendas of meetings shall be given to all members, to all parties and interested parties to proceedings on the agenda, and to all persons who request in writing such notice. Such notice shall be provided no less than 10 days prior to the scheduled meeting.

(b) Agenda. The meeting agenda shall be prepared by the executive director and shall include any item proposed by any member, or the executive director.

NOTE: Authority cited: Section 17527(g), Government Code. Reference: Sections 11125, 11125.1, 17527(b) and (c) and 17530, Government Code.

HISTORY

1. Repealer of former section 1182.1 and renumbering and amendment of former section 1182.2 to new section 1182.1 filed 7-23-96; operative 7-23-96. Submitted to OAL for printing only (Register 96, No. 30).

§ 1182.2. Meetings.

(a) Presiding Member. The chairperson shall preside over all meetings of the commission at which he/she is present. In his or her absence, the vice chairperson shall preside. If neither the chairperson nor the vice chairperson is in attendance, the member present who has the greatest seniority on the commission shall preside. The presiding member may yield the chair.

(b) Public Comments.

(1) Comments in Writing. Any person may submit comments in writing on any agenda item. Any person submitting such comments shall, if possible, provide the commission with ten (10) copies of such comments in advance of the meeting at which they are to be considered.

(A) Comments received at least 15 days in advance of the meeting shall be included in the commission's meeting binders.

(B) Comments received less than 15 days in advance of the meeting shall be included in the commission's meeting binders, if possible, or shall be provided to the commission when the item is called, unless otherwise agreed to by the commission or the executive director.

(C) Comments received on the day of the meeting before the item is taken up by the commission, shall be provided to the commission when the item is called.

(2) Oral Comments. Any person present and so desiring shall be given an opportunity to make oral comments on any agenda item, provided, however, that the presiding member may limit or preclude such comments as necessary for the orderly conduct of business.

(3) This subsection does not apply to submission of the following:

(A) State agency responses, opposition, and recommendations on a test claim;

(B) Test claimant and interested party rebuttals to state agency responses, opposition, and recommendations on a test claim.

(C) Comments by parties and interested parties on the draft of the staff analysis of a test claim.

NOTE: Authority cited: Sections 17527(g) and 17553, Government Code. Reference: Sections 11125.7 and 17526-17528, Government Code.

HISTORY

1. Renumbering of former section 1182.2 to new section 1182.1 and renumbering of former section 1182.3 to new section 1182.2 filed 7-23-96; operative 7-23-96. Submitted to OAL for printing only (Register 96, No. 30).

§ 1182.3. Permanent Record.

(a) The commission shall keep minutes of its meetings. Minutes shall be approved by the commission and, upon approval, shall be signed by the chairperson or other person designated by the chairperson. Signed minutes shall be the original evidence of actions taken at any meeting, including the text of any resolutions adopted.

(b) Commission public meetings shall be recorded by stenographic reporter or electronic recording or both. The transcript or recordings shall be kept for the period of time required by applicable law governing the retention of records of state agency public proceedings, or until conclusion of administrative or judicial proceedings, whichever is later.

NOTE: Authority cited: Section 17527(g), Government Code. Reference: Section 17530, Government Code.

HISTORY

1. Renumbering of former section 1182.3 to new section 1182.2 and renumbering of former section 1182.4 to new section 1182.3 and amendment of NOTE filed 7-23-96; operative 7-23-96. Submitted to OAL for printing only (Register 96, No. 30).

§ 1182.4. Default Rules.

In all cases not provided for by Government Code Section 17500 et seq., the Bagley-Keene Open Meetings Act (Government Code Section 11120 et seq.) and the commission's rules and regulations, the authority shall be Robert's Rules of Order (revised), unless otherwise designated by the commission at the annual election meeting.

NOTE: Authority cited: Sections 17500 and 17527(g), Government Code. Reference: Sections 11120 et seq. and 17526, Government Code.

HISTORY

1. New section filed 11–13–98; operative 11–13–98 pursuant to Government Code section 11343.4(d) (Register 98, No. 46). For prior history, see Register 96, No. 30.

§ 1182.5. Teleconference.

The commission may hold an open or closed meeting by teleconference if it is difficult or impossible for the commission to achieve a quorum. A meeting held by teleconference shall be held subject to all of the following:

(a) A meeting held by teleconference shall comply with the Bagley–Keene Open Meetings Act.

(b) Each teleconference location shall be identified in the notice of the meeting and shall be accessible to the public.

(c) The portion of the teleconference meeting that is required to be open to the public shall be audible to the public at the location specified in the notice of the meeting.

(d) All votes taken during a teleconference meeting shall be by rollcall.

(e) The portion of the teleconferenced meeting that is closed to the public may not include the consideration of any agenda item pursuant to Section 11125.5 of the Government Code.

(f) At least one member of the commission shall be physically present at the location specified in the notice of the meeting.

NOTE: Authority cited: Section 17527(g), Government Code. Reference: Sections 11123, 17527(b) and (c), Government Code.

HISTORY

1. Repealer and new section heading, section and NOTE filed 7–23–96; operative 7–23–96. Submitted to OAL for printing only (Register 96, No. 30).

Article 3. Test Claims

§ 1183. Test Claim Filing.

(a) A local agency or school district shall file a test claim with the commission to obtain a mandate determination.

(b) Any test claim filed with the commission must allege increased costs as a result of the statute or executive order that exceed the amount set in Government Code section 17564.

(c) Except as provided in Government Code sections 17573 and 17574, any test claim or amendment filed with the commission must be filed not later than 12 months following the effective date of a statute or executive order, or within 12 months of incurring increased costs as a result of a statute or executive order, whichever is later. For purposes of this subsection, "within 12 months" means by June 30 of the fiscal year following the fiscal year in which increased costs were first incurred by the test claimant.

(d) All test claims, or amendments thereto, shall be filed on a form developed by the executive director and shall contain all of the elements and supplemental documents required by the form and statute.

(e) The claimant shall file one original test claim, or amendment thereto, and accompanying documents with the commission. The original shall be unbound and single–sided, without tabs, and include a table of contents.

(f) The claimant shall also file seven (7) copies of the test claim, or amendment thereto, and accompanying documents with the commission. The copies may be double–sided and shall not include tabs.

(g) Within ten (10) days of receipt of a test claim, or amendment thereto, commission staff shall notify the claimant if the test claim is complete or incomplete and send a copy of these regulations unless a correct copy was previously provided. Test claims will be considered incomplete if any of the elements required in subsections (d), (e), or (f) of this Section are illegible or are not included. If a complete test claim is not received within thirty (30) calendar days from the date the incomplete test claim was returned, the executive director may disallow the original test claim filing date. A new test claim(s) may be accepted on the same statute or executive order alleged to impose a mandate.

(h) Test claims may be prepared as a joint effort between two or more claimants and filed with the commission if the claimants attest to all of the following in the test claim filing:

(1) The claimants allege state–mandated costs result from the same statute or executive order;

(2) The claimants agree on all issues of the test claim; and,

(3) The claimants have designated one contact person to act as the resource for information regarding the test claim.

(i) Any test claim, or portion of a test claim, that the commission lacks jurisdiction to hear for any reason may be dismissed by the executive director with a written notice stating the reason for dismissal.

(j) Any party may appeal to the commission for review of the actions and decisions of the executive director under this Section pursuant to Section 1181 of these regulations.

NOTE: Authority cited: Sections 17527(g) and 17553, Government Code. Reference: Sections 17521, 17530, 17551, 17553, 17557(e), 17564, 17573 and 17574, Government Code.

HISTORY

1. New subsection (f) and amendment of NOTE filed 4–29–87; operative 5–29–87 (Register 87, No. 18).
2. Amendment of section and NOTE filed 7–23–96; operative 7–23–96. Submitted to OAL for printing only (Register 96, No. 30).
3. Amendment filed 9–13–99; operative 9–13–99. Submitted to OAL for printing only pursuant to Government Code section 17527 (Register 99, No. 38).
4. Amendment of section and NOTE filed 4–21–2003; operative 4–21–2003. Submitted to OAL for printing only pursuant to Government Code section 17527(g) (Register 2003, No. 17).
5. Amendment of section and NOTE filed 9–6–2005; operative 9–6–2005. Exempt from OAL review and submitted to OAL for printing only pursuant to Government Code section 17527(g) (Register 2005, No. 36).
6. Amendment of subsection (c) and NOTE filed 4–24–2008; operative 4–24–2008 pursuant to Government Code section 11343.4. Submitted to OAL for printing only (Register 2008, No. 17).

§ 1183.01. Timelines.

(a) In computing any period of time prescribed by these regulations and applicable statutes, the following rules shall apply:

(1) The day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or state holiday.

(2) Days representing extensions of time and postponements of hearings granted to the parties shall be tolled and may not be counted toward the date on which a statewide cost estimate must be adopted by the commission.

(3) Days following a test claimant's submission of incomplete information to the commission, from the date on which commission staff returns the incomplete information to the claimant up to the date on which the commission receives complete information from the test claimant, shall be tolled and may not be counted toward the date on which a statewide cost estimate must be adopted by the commission.

(4) If a party or interested party to a test claim notifies commission staff that a reasonable reimbursement methodology may be developed for inclusion in pending parameters and guidelines, the days following the date of the notification up to the date on which a reasonable reimbursement methodology is developed, shall be tolled and may not be counted toward the date on which a statewide cost estimate must be adopted by the commission. The days tolled shall not exceed sixty (60) days from the date of the notification.

(5) If the test claimant and the Department of Finance notify the commission staff in writing of their intent to develop a reasonable reimbursement methodology and statewide estimate of costs for the initial claiming period and budget year for reimbursement pursuant to Government Code section 17557.1, the days following the date of the notification up to the date on which a draft reasonable reimbursement methodology and proposed statewide estimate of costs are developed and submitted to the commission, shall be tolled and may not be counted toward the date on which a statewide cost estimate must be adopted by the commission. The days tolled shall not exceed 180 days from the date of the notification.

(6) Three (3) days shall be added to any prescribed period in which a party or interested party is required or permitted to do an act after service of a document upon that party or interested party by mail. For purposes of this Section, "mail" includes interdepartmental mail between state agencies. The three (3) days added for mail service shall be tolled and may not be counted toward the date on which a statewide cost estimate must be adopted.

(7) Solely for the purpose of determining when a statewide cost estimate shall be adopted, test claims that are amended, severed, or consolidated shall be deemed received on the effective date of the last amendment, severance, or consolidation, unless otherwise stipulated by the parties and approved by the executive director.

(8) Days between the effective date of the parameters and guidelines and the date the initial reimbursement claims are due to the Office of the State Controller shall be tolled and may not be counted toward the date on which a statewide cost estimate must be adopted by the commission.

(b) The following timelines shall be used by commission staff as a reference for the timely processing of test claims, adoption of statewide cost estimates or statewide estimates of costs:

(1) Timeline for a Test Claim, Parameters and Guidelines, and Statewide Cost Estimate (12 Months)

PARTY/ACTIVITIES	*DAY NUMBER*
TEST CLAIM	
CLAIMANT files test claim with the commission.	0
COMMISSION staff begins counting days on the first day after receipt.	1
COMMISSION staff reviews test claim to determine if complete	by 10
COMMISSION staff sends test claim to state agencies for review.	by 10
COMMISSION staff convenes informal conference with parties, if necessary.	by 30
STATE AGENCIES file comments on test claim.	by 40
CLAIMANT submits rebuttal.	by 70
COMMISSION staff completes draft analysis of test claim and serves on parties.	by 100
PARTIES submit comments on staff's draft analysis of test claim.	by 130
COMMISSION staff completes analysis and issues Proposed Statement of Decision.	by 160
COMMISSION hears test claim and adopts Proposed Statement of Decision.	by 180
COMMISSION staff issues Statement of Decision and serves on parties.	by 190
COMMISSION staff notifies Legislature of Statement of Decision	by 210
PARAMETERS AND GUIDELINES	
CLAIMANT submits proposed Parameters and Guidelines.	by 220
STATE AGENCIES AND PARTIES may file comments.	by 235
CLAIMANT rebuts comments.	by 250
COMMISSION staff completes draft Parameters and Guidelines and serves on parties.	by 265
PARTIES submit comments on staff's draft Parameters and Guidelines.	by 275
COMMISSION staff completes Parameters and Guidelines and serves on parties.	by 279
COMMISSION conducts hearing and adopts Parameters and Guidelines	by 293
COMMISSION staff issues adopted Parameters and Guidelines.	by 303
STATEWIDE COST ESTIMATE	
COMMISSION staff develops Statewide Cost Estimate.	by 335
ALL PARTIES comment on Statewide Cost Estimate.	by 345
COMMISSION staff revises Statewide Cost Estimate.	by 350
COMMISSION conducts hearing and adopts Statewide Cost Estimate.	by 365
COMMISSION staff reports Statewide Cost Estimate to the Legislature	by 395

2. Timeline for a Test Claim, Reasonable Reimbursement Methodology, and Statewide Estimate of Costs

PARTY/ACTIVITIES	*DAY NUMBER*
TEST CLAIM	
CLAIMANT files test claim with the commission	0
COMMISSION staff begins counting days on the first day after receipt.	1
COMMISSION staff reviews test claim to determine if complete.	by 10
COMMISSION staff sends test claim to state agencies for review.	by 10
COMMISSION staff convenes informal conference with parties, if necessary.	by 30
STATE AGENCIES file comments on test claim.	by 40
CLAIMANT submits rebuttal.	by 70
COMMISSION staff completes draft analysis of test claim and serves on parties.	by 100
PARTIES submit comments on staff's draft analysis of test claim.	by 130
COMMISSION staff completes analysis and issues Proposed Statement of Decision.	by 160
COMMISSION hears test claim and adopts Proposed Statement of Decision.	by 180
COMMISSION staff issues Statement of Decision and serves on parties.	by 190
COMMISSION staff notifies Legislature of Statement of Decision.	by 220
REASONABLE REIMBURSEMENT METHODOLOGY (RRM) AND STATEWIDE ESTIMATE OF COSTS (SEC)	
CLAIMANT AND DOF notify Commission in writing of their intent to follow the process in 17557.1 to develop a RRM and SEC for the initial claiming period and budget year (30 days after SOD).	by 220
CLAIMANT AND DOF submit plan no later than 6 months after the date of letter of intent and sixty (60) days before hearing.	by 400
COMMISSION staff notifies parties of comment period.	by 410
PARTIES submit comments on the draft RRM and SEC.	by 425
CLAIMANT AND DOF submit written rebuttal.	by 432
COMMISSION staff issues review comments and recommendation.	by 450
COMMISSION conducts hearing, approves the draft RRM, and adopts the proposed SEC for the initial claiming period and budget year.	by 460
COMMISSION staff submits RRM to the CONTROLLER.	by 470
COMMISSION staff reports SEC to the Legislature.	by 490

(c) Extensions of Time and Postponements of Hearings

(1) Any party or interested party may request an extension of time by filing a request with the executive director before the date set for filing of responses, opposition, recommendations, rebuttals, plan, informational update, or comments with commission staff. Such request shall fully explain the reason(s) for the extension, propose a new date for filing, and be simultaneously served on all parties and interested parties who are on the mailing list pursuant to Section 1181.2 of these regulations. Any request for extension of time to file comments that would necessitate rescheduling a hearing shall also include a request for postponement of the hearing, pursuant to Section 1183.01(c)(2). Within forty-eight (48) hours of receipt of the request, the executive director shall make a determination and shall notify all parties and interested parties who are on the mailing list of the determination.

(A) A request filed by stipulation of the parties, including the claimant, shall be approved by the executive director for good cause.

(B) A request filed by the claimant, a state agency or interested party may be approved by the executive director for good cause.

(2) Any party may request the postponement of a hearing on a test claim, parameters and guidelines, or statewide cost estimate, until the next regularly scheduled hearing, or other date if specified. Such request shall fully explain the reason(s) for the postponement, and be simultaneously served on all parties and interested parties who are on the mailing list pursuant to Section 1181.2 of these regulations. Within forty-eight (48) hours of receipt of such a request, the executive director shall make a determination and shall notify all parties and interested parties who are on the mailing list of the determination.

(A) A request filed by the claimant at least fifteen (15) days before the hearing shall be approved by the executive director for good cause.

(B) A request filed by stipulation of the parties, including the claimant, shall be approved by the executive director for good cause.

(C) A request filed by the claimant less than fifteen (15) days before the hearing may be approved by the executive director for good cause.

(D) A request filed by a state agency may be approved by the executive director for good cause. If a state agency makes such a request before filing a response, opposition, or recommendation on the test claim, such request shall be accompanied by a notice of intent to oppose the test claim in whole or in part.

(3) The executive director may postpone a hearing on a test claim, parameters and guidelines, and a statewide cost estimate for good cause and shall notify all parties and interested parties who are on the mailing list.

NOTE: Authority cited: Sections 17527(g) and 17553, Government Code. Reference: Sections 17530, 17553, 17557 and 17557.1, Government Code.

HISTORY

1. New section filed 7–23–96; operative 7–23–96. Submitted to OAL for printing only (Register 96, No. 30).
2. Amendment filed 9–13–99; operative 9–13–99. Submitted to OAL for printing only pursuant to Government Code section 17527 (Register 99, No. 38).
3. Amendment of section and NOTE filed 4–21–2003; operative 4–21–2003. Submitted to OAL for printing only pursuant to Government Code section 17527(g) (Register 2003, No. 17).
4. Amendment of subsection (a)(2) and new subsections (a)(6)–(7) filed 2–23–2004; operative 2–23–2004. Submitted to OAL for printing only (Register 2004, No. 9).
5. Amendment of subsections (a)(1), (a)(4)–(7), (c)(1), (c)(2), (c)(2)(A) and (c)(2)(C) and amendment of NOTE filed 9–6–2005; operative 9–6–2005. Exempt from OAL review and submitted to OAL for printing only pursuant to Government Code section 17527(g) (Register 2005, No. 36).
6. New subsection (a)(5), subsection renumbering and amendment of subsections (b)–(b)(1), (c)(1) and NOTE filed 4–24–2008; operative 4–24–2008 pursuant to Government Code section 11343.4. Submitted to OAL for printing only (Register 2008, No. 17).

§ 1183.02. Review of Test Claim.

(a) Within ten (10) days of receipt of a completed test claim, or amendment thereto, commission staff shall send a copy of the test claim or amendment to the Department of Finance, Office of the State Controller, any affected state agency, and any known interested parties.

(b) The executive director shall notify the Department of Finance, Office of the State Controller, and any affected state agency that they shall have the opportunity to review and provide written response, opposition, or recommendations concerning the test claim within thirty (30) days and to present evidence at the hearing on the test claim.

(c) Content and Form. Written responses, opposition, or recommendations on the test claim shall contain the following documentary evidence, if applicable:

(1) If assertions or representations of fact are made, they must be supported by documentary evidence which shall be submitted with the state agency's response, opposition, or recommendations. All documentary evidence shall be authenticated by declarations under penalty of perjury signed by persons who are authorized and competent to do so and must be based on the declarant's personal knowledge or information or belief.

(2) Include a copy of relevant portions of state constitutional provisions, federal statutes, and executive orders, and a copy of administrative decisions and court decisions that may impact the alleged mandate, unless such authorities are also cited in the test claim. The specific chapters, articles, sections, or page numbers must be identified. Published court decisions arising from state mandate determinations by the Board of Control and the Commission on State Mandates, article XIII B, section 6 of the California Constitution, and Government Code sections 17500 and following are exempt from the requirements of this subsection.

(d) The written response, opposition, or recommendations and supporting documentation shall be signed at the end of the document, under penalty of perjury by an authorized representative of the state agency, with the declaration that it is true and complete to the best of the representative's personal knowledge or information or belief. The date of signing, the representative's title, address, and telephone number shall be included. If the authorized representative can be reached via facsimile machine, that phone number should also be included.

(e) Filing. An original and two (2) copies of a written response, opposition, or recommendations and supporting documentation concerning a test claim shall be filed with commission staff. A copy shall also be simultaneously served on the test claimant, other parties, and interested parties who are on the mailing list described in Section 1181.2 of these regulations. Proof of simultaneous service must be included with the response, opposition, or recommendations filed with commission staff.

(f) The original document shall be unbound and single–sided.

NOTE: Authority cited: Sections 17527(g) and 17553, Government Code. Reference: Sections 17530, 17553(a) and 17557(e), Government Code.

HISTORY

1. New section filed 7–23–96; operative 7–23–96. Submitted to OAL for printing only (Register 96, No. 30).
2. Amendment of subsections (a), (c)(2) and (e) filed 9–13–99; operative 9–13–99. Submitted to OAL for printing only pursuant to Government Code section 17527 (Register 99, No. 38).
3. Amendment of section and NOTE filed 9–6–2005; operative 9–6–2005. Exempt from OAL review and submitted to OAL for printing only pursuant to Government Code section 17527(g) (Register 2005, No. 36).

§ 1183.03. Claimant's Rebuttal.

(a) Test claimants and interested parties shall be given an opportunity to respond to state agencies' written responses, opposition, or recommendations concerning a test claim and to file written rebuttals within thirty (30) days of service of the responses, opposition, or recommendations.

(b) Content and Form. A written rebuttal shall contain the following documentary evidence, if applicable:

(1) If new assertions or representations of fact are made, they must be supported by documentary evidence which shall be submitted with the rebuttal. All documentary evidence must be authenticated by declarations under penalty of perjury signed by persons who are authorized and competent to do so and must be based upon the declarant's personal knowledge or information or belief.

(2) Include a copy of relevant portions of state constitutional provisions, federal statutes, and executive orders, and a copy of administrative decisions and court decisions that are cited in the rebuttal, unless such authorities are also cited in the test claim and/or any opposition thereto. The specific chapters, articles, sections, or page numbers shall be identified. Published court decisions arising from state mandate determinations by the Board of Control and the Commission on State Mandates, article XIII B, section 6 of the California Constitution, and Government Code sections 17500 and following are exempt from the requirements of this subsection.

(c) An original and two (2) copies of the written rebuttal to state agencies' responses, opposition, or recommendations concerning a test claim shall be filed with commission staff. A copy shall also be simultaneously served on the other parties and interested parties who are on the mailing list described in Section 1181.2 of these regulations. Proof of simultaneous service must be included with the rebuttal and supporting documentation.

(d) The rebuttal shall be signed at the end of the document, under penalty of perjury by the claimant or its authorized representative, with the declaration that the rebuttal is true and complete to the best of the declarant's personal knowledge or information or belief. The date of signing, the declarant's title, address, and telephone number shall be included. If the declarant can be reached by facsimile machine, that telephone number shall also be included.

NOTE: Authority cited: Sections 17527(g), 17553(a), Government Code. Reference: Sections 17530 and 17553(a), Government Code.

HISTORY

1. New section filed 7–23–96; operative 7–23–96. Submitted to OAL for printing only (Register 96, No. 30).
2. Amendment of subsections (b)(2) and (c) filed 9–13–99; operative 9–13–99. Submitted to OAL for printing only pursuant to Government Code section 17527 (Register 99, No. 38).

3. Amendment filed 9–6–2005; operative 9–6–2005. Exempt from OAL review and submitted to OAL for printing only pursuant to Government Code section 17527(g) (Register 2005, No. 36).

§ 1183.04. Informal Conference.

(a) The executive director may schedule an informal conference with the test claimant, the Department of Finance, Office of the State Controller, other affected state agencies and interested parties upon request. With the consent of the parties, the informal conference may be a teleconference.

(b) The purpose of an informal conference may be to

(1) Set dates for receiving state agency responses, opposition, recommendations, or claimant rebuttal; completing the staff analysis; and hearing the test claim.

(2) Give the test claimant the opportunity to present the test claim and to respond to questions from commission staff and other state agency staff or representatives for the purpose of resolving or clarifying issues of fact or law.

(3) Consider whether a reasonable reimbursement methodology may be developed and included in the parameters and guidelines.

(4) Review a draft reasonable reimbursement methodology and proposed statewide estimate of costs that are jointly prepared by the test claimant and the Department of Finance pursuant to Government Code section 17557.1.

(c) Any party may notify the executive director of any interested parties who should be invited to attend an informal conference.

(d) Unless waived by the parties, commission staff shall provide at least ten (10) days notice of the informal conference by mail, facsimile transmission, e–mail, or by other electronic media.

(e) Anything said, any document disclosed, and any new assertions and representations of fact made during an informal conference shall not be made part of the administrative record of a test claim unless properly admitted into the record through the submission of an amendment to a test claim, a written response, opposition, recommendations, comments, rebuttal, and/or public testimony.

NOTE: Authority cited: Sections 17527(g), 17553(a), Government Code. Reference: Sections 17518.5, 17530, 17553(a) and 17557.1, Government Code.

HISTORY

1. New section filed 7–23–96; operative 7–23–96. Submitted to OAL for printing only (Register 96, No. 30).
2. Amendment of subsections (b) and (d) filed 9–13–99; operative 9–13–99. Submitted to OAL for printing only pursuant to Government Code section 17527 (Register 99, No. 38).
3. Amendment of section and NOTE filed 9–6–2005; operative 9–6–2005. Exempt from OAL review and submitted to OAL for printing only pursuant to Government Code section 17527(g) (Register 2005, No. 36).
4. New subsection (b)(4) and amendment of NOTE filed 4–24–2008; operative 4–24–2008 pursuant to Government Code section 11343.4. Submitted to OAL for printing only (Register 2008, No. 17).

§ 1183.05. Claimant's Motion to Consolidate or Sever Test Claims.

Within thirty (30) days of filing a completed test claim, a claimant may file a motion with the executive director to consolidate part or all of any test claim with another test claim, or to sever any part of any test claim, if necessary to ensure the complete, fair, or timely consideration of any test claim.

(a) Any motion to consolidate or to sever shall be simultaneously served on all the parties and interested parties with the supporting documentation and proof of service.

(b) Within thirty (30) days after receipt of a motion to consolidate, the executive director may consolidate any test claims if they were submitted by two or more claimants and if the following exist in the filings: the test claimants allege state–mandated costs resulting from the same statute or executive order, and the claimants have designated one contact person to act as the resource for information regarding the test claim.

(c) Within thirty (30) days after receipt of a motion to sever, the executive director may sever part of any test claim.

(d) Any party may appeal to the commission for review of the actions and decisions of the executive director under this Section pursuant to Section 1181 of these regulations.

NOTE: Authority cited: Section 17527(g) and 17553(a), Government Code. Reference: Sections 17530, 17553, Government Code.

HISTORY

1. New section filed 7–23–96; operative 7–23–96. Submitted to OAL for printing only (Register 96, No. 30).
2. Amendment of subsection (b) and new subsection (d) filed 9–13–99; operative 9–13–99. Submitted to OAL for printing only pursuant to Government Code section 17527 (Register 99, No. 38).
3. Amendment of first paragraph and subsection (b) filed 9–6–2005; operative 9–6–2005. Exempt from OAL review and submitted to OAL for printing only pursuant to Government Code section 17527(g) (Register 2005, No. 36).

§ 1183.06. Executive Director's Authority to Consolidate Test Claims.

(a) The executive director may consolidate part or all of any test claim with another test claim, if necessary to ensure the complete, fair, or timely consideration of any test claim.

(b) At least ten (10) days before the action is taken, the executive director shall simultaneously serve on the parties and interested parties on the mailing list described in Section 1181.2 of these regulations a notice of any proposed action to consolidate.

(c) Any party may appeal to the commission for review of the actions and decisions of the executive director under this Section pursuant to Section 1181 of these regulations.

NOTE: Authority cited: Section 17527(g) and 17553, Government Code. Reference: Sections 17530, 17553,and 17554, Government Code.

HISTORY

1. New section filed 7–23–96; operative 7–23–96. Submitted to OAL for printing only (Register 96, No. 30).
2. Amendment of subsection (c) and new subsection (d) filed 9–13–99; operative 9–13–99. Submitted to OAL for printing only pursuant to Government Code section 17527 (Register 99, No. 38).
3. Amendment of subsection (b), repealer of subsection (c) and subsection relettering filed 9–6–2005; operative 9–6–2005. Exempt from OAL review and submitted to OAL for printing only pursuant to Government Code section 17527(g) (Register 2005, No. 36).

§ 1183.07. Review of Completed Test Claim and Preparation of Staff Analysis.

(a) Before the hearing on the test claim, commission staff shall prepare a final written analysis of the test claim, which shall include but not be limited to a review of the written responses, opposition, recommendations, and comments filed by other state agencies, interested parties, and the claimant. The final staff analysis shall describe the test claim and assist the commission in determining whether the alleged statutes or executive orders contain a reimbursable state–mandated program.

(b) At least eight (8) weeks before the hearing, or at such other time as required by the executive director or stipulated to by the parties, commission staff shall prepare a draft staff analysis and distribute it to the parties, interested parties, and any person who requests a copy.

(c) Any party or interested party may file written comments concerning the draft staff analysis with commission staff. Written comments shall be simultaneously served upon the parties and interested parties on the mailing list by the date determined and publicized by the executive director. A three (3) week period for comments shall be given, subject to the executive director's authority to expedite all matters pursuant to Government Code section 17530. All written comments timely filed shall be reviewed by commission staff and may be incorporated into the final written analysis of the test claim.

NOTE: Authority cited: Sections 17527(g) and 17553, Government Code. Reference: Sections 17514, 17530, 17551 and 17553, Government Code.

HISTORY

1. New section filed 7–23–96; operative 7–23–96. Submitted to OAL for printing only (Register 96, No. 30).
2. Amendment of subsections (b)–(c) filed 9–13–99; operative 9–13–99. Submitted to OAL for printing only pursuant to Government Code section 17527 (Register 99, No. 38).
3. Amendment filed 9–6–2005; operative 9–6–2005. Exempt from OAL review and submitted to OAL for printing only pursuant to Government Code section 17527(g) (Register 2005, No. 36).

§ 1183.08. Withdrawal of Test Claims.

A test claim, or any portion of a test claim, may be withdrawn by the claimant(s) upon written application to the executive director any time before a decision is adopted or after enactment of a legislatively determined mandate on the same statute or executive order pursuant to Government Code section 17574. The claimant(s) shall serve a copy of the written application on all parties and interested parties on the mailing list described in Section 1181.2 of these regulations. Except as provided in Government Code section 17574, if no other local agency or school district takes over a claim by substitution of parties within sixty (60) days of service of the application to withdraw, a decision dismissing the claim shall be issued by the commission.

NOTE: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections 17553(a) and 17574, Government Code.

HISTORY

1. New section filed 9–13–99; operative 9–13–99. Submitted to OAL for printing only pursuant to Government Code section 17527 (Register 99, No. 38).
2. Amendment filed 9–6–2005; operative 9–6–2005. Exempt from OAL review and submitted to OAL for printing only pursuant to Government Code section 17527(g) (Register 2005, No. 36).
3. Amendment of section and NOTE filed 4–24–2008; operative 4–24–2008 pursuant to Government Code section 11343.4. Submitted to OAL for printing only (Register 2008, No. 17).

§ 1183.081. Local Agency or School District "Abandonment" of Test Claim.

(a) The executive director may deem a test claim "abandoned" if any of the following events occurs:

1. The test claimant does not respond, within thirty (30) days of service, to a written notification sent to the superintendent of the school district or chief administrative officer of the local agency from the executive director that the test claim will be deemed "abandoned".

2. The local agency or school district provides written notification to the commission of their withdrawal as the test claimant from the test claim.

(b) If the executive director deems a test claim "abandoned" pursuant to subdivision (a), the executive director shall serve a copy of a written notice that a test claim has been "abandoned" on the original test claimant and any persons designated as their representative for the test claim, all parties and interested parties on the mailing list described in Section 1181.2 of these regulations, and associations representing local agencies and school districts. The first local agency or school district that requests in writing to the executive director to substitute for the original test claimant, within sixty (60) days of service of the written notice of abandonment, shall be the test claimant for purposes of the test claim proceedings. Other local agencies or school districts which submit subsequent timely written requests will be included as co–claimants.

(c) The original test claimant may appeal to the commission for review of the actions and decisions of the executive director under this section pursuant to Section 1181 of these regulations.

NOTE: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Section 17553(a), Government Code.

HISTORY

1. New section filed 4–24–2008; operative 4–24–2008 pursuant to Government Code section 11343.4. Submitted to OAL for printing only (Register 2008, No. 17).

§ 1183.09. Dismissal of Test Claims.

(a) A test claim which has been postponed or placed on inactive status by the claimant for a period of more than one year may be dismissed by the commission on its own motion or by a motion of a party after notice and an opportunity to be heard has been made to the claimant, parties and interested parties to take over the claim by substitution of parties.

(b) Before scheduling a hearing for dismissal of a test claim, the commission shall first notify the claimant, in writing, of its intention to initiate dismissal of the test claim. The claimant shall have 60 days from the date of the notice to either reactivate the test claim or to withdraw the claim in accordance with Section 1183.08 of these regulations.

(c) If the claimant does not respond within 60 days after receipt of the notice, the test claim will be deemed to have been withdrawn in accordance with Section 1183.08 of these regulations and the commission shall serve written notice to initiate dismissal of the claim to all parties, organizations or associations representing local agencies or school districts, and all potential claimants. A copy of the notice shall also be posted electronically. If no other local agency or school district takes over the claim by substitution of parties within 60 days of the issuance of the notice, the commission shall schedule a hearing for dismissal of the test claim.

(d) The hearing on a dismissal of a test claim shall be conducted in accordance with Article 7 of these regulations.

(e) Notice of a hearing to dismiss a test claim shall be made within 30 days of the date scheduled for hearing. The notice of hearing shall advise the claimant, parties, and interested parties that they shall have the opportunity to provide written comments on the motion to dismiss a test claim. The claimant, parties, and interested parties shall submit an original and two (2) copies of their written comments to the commission and a copy shall be simultaneously served to all other parties and interested parties who are on the mailing list described in Section 1181.2 of these regulations.

(f) Delays or postponements under the following circumstances will not be considered for purposes of computing whether a test claim has been postponed or placed on inactive status by the claimant for more than one year:

1. Delays or postponements made at the request of the commission or other state agency or department;

2. Delays or postponements, made at the request of the claimant, pending the resolution of a matter currently before the commission of an issue similar to or related to the postponed test claim; and

3. Delays or postponements, made at the request of the claimant, pending the resolution of litigation of an issue similar to or related to the postponed test claim.

(g) The provisions of this regulation shall only apply to claims filed on or after the operative date of this regulation.

NOTE: Authority cited: Sections 17527(c) and (g) and 17532, Government Code. Reference: Sections 17525, 17527(c) and 17532, Government Code.

HISTORY

1. New section filed 4–5–2001; operative 5–5–2001. Submitted to OAL for printing only pursuant to Government Code section 17527 (Register 2001, No. 14).

§ 1183.1. Content of Parameters and Guidelines.

(a) The parameters and guidelines shall describe the claimable reimbursable costs and contain the following information:

(1) Summary of the Mandate. A summary of the mandate identifying the statute(s) or executive order(s) that contain the mandate and/or the increased level of service and the activities found to be required under those statute(s) or executive order(s).

(2) Eligible Claimants. A description of the types and/or level(s) of local governmental entities that are eligible to file for reimbursement.

(3) Period of Reimbursement. A description of the period of reimbursement specifying the first and subsequent fiscal years that can be reimbursed.

(4) Reimbursable Activities. A description of the specific costs and types of costs that are reimbursable, including one–time costs and on–going costs, and a description of the most reasonable methods of complying with the mandate. "The most reasonable methods of complying with the mandate" are those methods not specified in statute or executive order that are necessary to carry out the mandated program.

(5) Claim Preparation. Instruction on claim preparation, including instructions for direct and indirect cost reporting, or application of a reasonable reimbursement methodology.

(6) Record Retention. Notice of the Office of the State Controller's authority to audit claims and the amount of time supporting documents must be retained during the period subject to audit.

(7) Offsetting Revenues and Reimbursements (if applicable).

Identification of:

i. Dedicated state and federal funds appropriated for this program.

ii. Non–local agency funds dedicated for this program.

iii. Local agency's general purpose funds for this program.

iv. Fee authority to offset partial costs of this program.

(8) Offsetting Savings (if applicable). Identification of any offsetting savings in the same program experienced because of the same statute(s) or executive order(s) found to contain a mandate.

(9) Claiming Instructions. Notice of the Office of the State Controller's duty to issue claiming instructions, which constitutes notice of the right of local agencies and school districts to file reimbursement claims, based upon the statement of decision and parameters and guidelines adopted by the commission.

(10) Remedies Before the Commission. Instructions for filing requests to review claiming instructions and requests to amend parameters and guidelines with the commission.

(11) Legal and Factual Basis. Notice that the legal and factual basis for the parameters and guidelines are found in the administrative record for the test claim, which is on file with the commission.

NOTE: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections 17518.5, 17530, 17553, 17556(e) and 17557, Government Code.

HISTORY

1. Amendment of section heading, section and NOTE filed 7–23–96; operative 7–23–96. Submitted to OAL for printing only (Register 96, No. 30).
2. Amendment of section heading, section and NOTE filed 9–6–2005; operative 9–6–2005. Exempt from OAL review and submitted to OAL for printing only pursuant to Government Code section 17527(g) (Register 2005, No. 36).

§ 1183.11. Submission and Review of Proposed Parameters and Guidelines; Submission of Comments.

(a) Within thirty (30) days of adoption of the statement of decision on a test claim, or the early termination or expiration of a reasonable reimbursement methodology, the successful test claimant shall submit to commission staff an original and seven (7) copies of proposed parameters and guidelines, pursuant to Government Code section 17557, subdivision (a).

(b) If any of the elements described in Section 1183.1 are missing or are not adequately addressed, commission staff shall, within ten (10) days of receipt, deem the proposed parameters and guidelines incomplete and shall return the proposal to the claimants with a description of the subjects that are to be redrafted or supplemented.

(c) Within ten (10) days of receipt of completed proposed parameters and guidelines, commission staff shall send a copy to the Department of Finance, Office of the State Controller, affected state agencies, and interested parties who are on the mailing list described in Section 1181.2 of these regulations.

(d) Commission staff shall notify all recipients that they shall have the opportunity to review and provide written comments or recommendations concerning the proposed parameters and guidelines within fifteen (15) days of service.

(e) State agencies and interested parties shall submit an original and two (2) copies of written responses to commission staff and shall simultaneously serve a copy on the test claimant, other affected state agencies, and other interested parties who are on the mailing list described in Section 1181.2 of these regulations.

(f) Within fifteen (15) days of service of the comments and recommendations prepared by state agencies and interested parties, the claimant and other interested parties may submit an original and two (2) copies of written rebuttals to commission staff, and shall simultaneously serve a copy on the other parties and interested parties who are on the mailing list described in Section 1181.2 of these regulations.

NOTE: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections 17530, 17553(a), 17557 and 17557.2, Government Code.

HISTORY

1. New section filed 7–23–96; operative 7–23–96. Submitted to OAL for printing only (Register 96, No. 30).
2. Amendment of subsections (b)–(d) filed 9–13–99; operative 9–13–99. Submitted to OAL for printing only pursuant to Government Code section 17527 (Register 99, No. 38).
3. Amendment of section heading, new subsections (a) and (b), subsection relettering and amendment of newly designated subsections (c)–(f) filed 9–6–2005; operative 9–6–2005. Exempt from OAL review and submitted to OAL for printing only pursuant to Government Code section 17527(g) (Register 2005, No. 36).
4. Amendment of subsection (a) and NOTE filed 4–24–2008; operative 4–24–2008 pursuant to Government Code section 11343.4. Submitted to OAL for printing only (Register 2008, No. 17).

§ 1183.12. Alternate Process for Proposed Parameters and Guidelines.

(a) Within ten (10) days after adoption of a statement of decision on a test claim, commission staff may expedite the parameters and guidelines process by drafting proposed parameters and guidelines to assist the claimant. The draft proposed parameters and guidelines shall be served on the parties and interested parties on the mailing list described in Section 1181.2 of these regulations.

(b) In lieu of filing an original proposal pursuant to Government Code section 17557, subdivision (a), the successful test claimant may file modifications and/or comments on staff's draft proposal with commission staff. The claimant shall review all sections and if necessary may:

(1) Clarify the reimbursable activities identified by commission staff, and provide an explanation of why the clarification is necessary.

(2) Include additional descriptions of the most reasonable methods of complying with the mandate. "The most reasonable methods of complying with the mandate" are those methods not specified in statute or executive order that are necessary to carry out the mandated program. For each additional method proposed, the test claimant shall provide an explanation of why it is reasonably necessary.

(3) Indicate whether the commission should consider a reasonable reimbursement methodology for this program, and the basis for the recommendation.

(4) Identify offsetting revenues and reimbursements (if applicable), including:

i. Dedicated state and federal funds appropriated for this program.

ii. Non–local agency funds dedicated for this program.

iii. Local agency's general purpose funds for this program.

iv. Fee authority to offset partial costs of this program.

(5) Identify offsetting savings (if applicable), including any offsetting savings in the same program experienced because of the same statute(s) or executive order(s) found to contain a mandate.

(c) The successful test claimant shall file its proposed modifications and/or comments within twenty (20) days of receipt of commission staff's draft proposal.

(d) The opportunity for state agencies and interested parties to comment on staff's draft proposal and the claimant's modifications and/or comments, and the claimant and interested parties' opportunity for rebuttal will be conducted according to the timelines under Section 1181.11 of these regulations.

NOTE: Authority cited: Sections 17527(g), 17530 and 17553(a), Government Code. Reference: Sections 17553(a), 17556(e), 17557 and 17564, Government Code.

HISTORY

1. Renumbering of former section 1183.12 to section 1183.14 and new section 1183.12 filed 9–6–2005; operative 9–6–2005. Exempt from OAL review and submitted to OAL for printing only pursuant to Government Code section 17527(g) (Register 2005, No. 36).

§ 1183.13. Reasonable Reimbursement Methodology.

(a) Government Code section 17518.5 defines a "reasonable reimbursement methodology" as a formula for reimbursing local agencies and school districts for costs mandated by the state, as defined in Section 17514.

(b) For purposes of developing a reasonable reimbursement methodology pursuant to Government Code sections 17557 or 17557.1, the following definitions apply:

(1) "Costs to implement the mandate in a cost–efficient manner" include only those costs for the activities that were determined to be reimbursable by the commission in the Statement of Decision, and the costs

for the most reasonable methods of complying with the mandate pursuant to Section 1183.1, subdivision (a)(4), of these regulations.

(2) An interested party may submit cost information or other cost projections that can be the basis of a reasonable reimbursement methodology, and letters in support of a draft reasonable reimbursement methodology submitted pursuant to Government Code section 17557.1.

(3) When surveying or otherwise gathering cost data to develop a formula, "representative sample of claimants" does not include eligible claimants that do not respond to surveys or otherwise participate in submitting cost data.

NOTE: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections 17518.5, 17557 and 17557.1, Government Code.

HISTORY

1. New section filed 9–6–2005; operative 9–6–2005. Exempt from OAL review and submitted to OAL for printing only pursuant to Government Code section 17527(g) (Register 2005, No. 36).
2. New subsections (a)–(b)(2)(C) and subsection relettering filed 9–10–2007; operative 9–10–2007. Exempt from OAL review and submitted to OAL for printing only pursuant to Government Code section 17527(g) (Register 2007, No. 37).
3. Amendment of section and NOTE filed 4–24–2008; operative 4–24–2008 pursuant to Government Code section 11343.4. Submitted to OAL for printing only (Register 2008, No. 17).

§ 1183.131. Reasonable Reimbursement Methodology, Included in Parameters and Guidelines.

(a) If the claimant indicates in the proposed parameters and guidelines or comments that a reasonable reimbursable methodology, as defined in Government Code section 17518.5, should be considered for inclusion in the parameters and guidelines; or if the Department of Finance, Office of the State Controller, any affected state agency, claimant, or interested party proposes consideration of a reasonable reimbursement methodology, commission staff shall immediately schedule an informal conference to discuss the methodology.

(b) Proposed reasonable reimbursement methodology, as described in Government Code section 17518.5, shall include any documentation or assumption relied upon to develop the proposed methodology. Proposals shall be submitted to the commission within sixty (60) days following the informal conference described in this section.

(c) Claimants, state agencies, and interested parties shall submit an original and two (2) copies of a proposed reasonable reimbursement methodology, and shall simultaneously serve a copy on the other parties and interested parties on the mailing list described in Section 1181.2 of these regulations.

(d) Commission staff shall notify all recipients that they shall have the opportunity to review and provide written comments or recommendations concerning the proposed reasonable reimbursement methodology within fifteen (15) days of service.

(e) Claimants, state agencies, and interested parties shall submit an original and two (2) copies of written responses to commission staff and shall simultaneously serve a copy on the other parties and interested parties on the mailing list described in Section 1181.2 of these regulations.

(f) Within fifteen (15) days of service of the written comments prepared by other parties and interested parties, the party that proposed the reasonable reimbursement methodology may submit an original and two (2) copies of written rebuttals to commission staff, and shall simultaneously serve a copy on the other parties and interested parties on the mailing list described in Section 1181.2 of these regulations.

NOTE: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections 17518.5, 17557 and 17557.1, Government Code.

HISTORY

1. New section filed 4–24–2008; operative 4–24–2008 pursuant to Government Code section 11343.4. Submitted to OAL for printing only (Register 2008, No. 17).

§ 1183.14. Adoption of Parameters and Guidelines.

(a) After review of the proposed parameters and guidelines, written comments, recommendations, and rebuttals submitted by state agencies and interested parties, commission staff shall recommend the adoption of the claimant's proposed parameters and guidelines or adoption of an amended, modified, or supplemented version of the claimant's proposed parameters and guidelines. Commission staff's recommendation may include a reasonable reimbursement methodology developed by a party pursuant to Government Code section 17518.5.

(b) A draft of commission staff's recommendation may be presented to the parties and interested parties at a prehearing or informal conference before presentation to the commission.

(c) The commission shall conduct at least one (1) informational hearing on parameters and guidelines before adoption pursuant to Government Code section 17557.

(d) Within ten (10) days of the adoption of parameters and guidelines, the executive director shall send copies to the Office of the State Controller, and to parties and interested parties who are on the mailing list described in Section 1181.2 of these regulations.

NOTE: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference cited: Sections 17518.5, 17557 and 17553(a), Government Code.

HISTORY

1. New section filed 7–23–96; operative 7–23–96. Submitted to OAL for printing only (Register 96, No. 30).
2. Editorial correction restoring inadvertently omitted subsection (d) (Register 99, No. 38).
3. Amendment of subsection (d) filed 9–13–99; operative 9–13–99. Submitted to OAL for printing only pursuant to Government Code section 17527 (Register 99, No. 38).
4. Renumbering and amendment of former section 1183.12 to section 1183.14 filed 9–6–2005; operative 9–6–2005. Exempt from OAL review and submitted to OAL for printing only pursuant to Government Code section 17527(g) (Register 2005, No. 36).
5. Amendment of subsection (a) and NOTE filed 4–24–2008; operative 4–24–2008 pursuant to Government Code section 11343.4. Submitted to OAL for printing only (Register 2008, No. 17).

§ 1183.2. Amendments to Parameters and Guidelines.

(a) All requests pursuant to Government Code section 17557 to amend, modify, or supplement parameters and guidelines shall include the proposed language for the specific sections of the existing parameters and guidelines that are to be changed, and include a narrative explaining why the amendment is required.

(b) Number of copies. A claimant or state agency requesting an amendment to existing parameters and guidelines shall submit an original and seven (7) copies of proposed amendments to commission staff.

(c) Within ten (10) days of receipt of a request to amend, modify, or supplement parameters and guidelines, commission staff shall send a copy to the Department of Finance, Office of the State Controller, affected state agencies, and interested parties who are on the mailing list described in Section 1181.2 of these regulations.

(d) Commission staff shall notify all recipients that they shall have the opportunity to review and provide written comments or recommendations concerning the proposed amendment of the parameters and guidelines within thirty (30) days of service.

(e) Parties and interested parties shall submit an original and two (2) copies of written responses to commission staff and shall simultaneously serve a copy on the test claimant, other affected state agencies, and other interested parties who are on the mailing list described in Section 1181.2 of these regulations.

(f) The requesting party and other interested parties may submit an original and two (2) copies of written rebuttals to commission staff within thirty (30) days of service of the comments and recommendations prepared by parties and interested parties. Written rebuttals shall be simultaneously served on the other parties and interested parties on the mailing list described in Section 1181.2 of these regulations.

(g) An amendment shall be made only after the commission has conducted at least one (1) informational hearing in accordance with Article 8 of these regulations.

(h) A request to amend parameters and guidelines may be withdrawn by written application to the executive director any time before a decision is adopted, or by oral application at the time of hearing.

NOTE: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections 17557 and 17560, Government Code.

HISTORY

1. Amendment of section and NOTE filed 9–13–99; operative 9–13–99. Submitted to OAL for printing only pursuant to Government Code section 17527 (Register 99, No. 38).
2. Amendment filed 9–6–2005; operative 9–6–2005. Exempt from OAL review and submitted to OAL for printing only pursuant to Government Code section 17527(g) (Register 2005, No. 36).

§ 1183.21. Dismissal of Requests for Amendments to Parameters and Guidelines.

(a) Requests to amend parameters and guidelines that have been postponed or placed on inactive status by the requesting party for a period of more than one (1) year may be dismissed by the commission on its own motion, or by a motion of a party after notice and an opportunity to be heard has been made to the parties and interested parties.

(b) The hearing on a dismissal of a request to amend parameters and guidelines shall be conducted in accordance with Article 7 of these regulations.

(c) Notice of a hearing to dismiss a request to amend parameters and guidelines shall be made within sixty (60) days of the date scheduled for hearing. A copy of the notice shall also be posted electronically. Commission staff shall notify the parties and interested parties that they shall have the opportunity to provide written comments on the motion to dismiss a request to amend parameters and guidelines within forty–five (45) days of receipt of the notice of the hearing. Parties and interested parties shall submit an original and two (2) copies of their written comments to commission staff and a copy shall be simultaneously served on all other parties and interested parties who are on the mailing list described in Section 1181.2 of these regulations.

(d) Delays or postponements under the following circumstances will not be considered for purposes of computing whether a request for amendments to parameters and guidelines has been postponed or placed on inactive status by the claimant for more than (1) one year:

1. Delays or postponements made at the request of the commission or other state agency or department;

2. Delays or postponements made at the request of the requesting party, because the resolution of a matter currently before the commission of an issue similar to or related to the proposed amendments to the parameters and guidelines is pending; and

3. Delays or postponements made at the request of the requesting party, because the resolution of litigation of an issue similar to or related to the proposed amendments to the parameters and guidelines is pending.

NOTE: Authority cited: Sections 17527(c) and (g) and 17532, Government Code. Reference: Sections 17525, 17527(c), 17532 and 17557, Government Code.

HISTORY

1. New section filed 4–5–2001; operative 5–5–2001. Submitted to OAL for printing only pursuant to Government Code section 17527 (Register 2001, No. 14).
2. Amendment of section and NOTE filed 9–6–2005; operative 9–6–2005. Exempt from OAL review and submitted to OAL for printing only pursuant to Government Code section 17527(g) (Register 2005, No. 36).

§ 1183.25. Statewide Cost Estimate.

(a) If the commission determines that there are state–mandated costs pursuant to Government Code sections 17514 and 17556, it shall adopt a statewide cost estimate of the amount within twelve (12) months after receipt of a completed test claim unless extended to eighteen (18) months by the commission or executive director. As provided in Section 1183.01, certain days may be tolled and may not be counted toward the date a statewide cost estimate must be adopted by the commission.

(b) Commission staff may develop the statewide cost estimate based on initial reimbursement claims filed with the Office of the State Controller, application of a reasonable reimbursement methodology, or use a different methodology based on recommendations from the test claimant, the Department of Finance, or other interested parties.

(c) Before presenting a statewide cost estimate to the commission for adoption, commission staff shall disclose to the parties and interested parties the methodology, basis for any assumptions made, and sources of any data used to develop the estimate. This information may be disclosed to the parties and interested parties to the test claim during an informal conference or prehearing conference.

(d) Before adopting the statewide cost estimate, the commission shall hold at least one (1) informational hearing.

(e) Upon adoption of the statewide cost estimate by the commission, a summary of the parameters and guidelines and the statewide cost estimate shall be included in the commission's report to the Legislature required by Government Code section 17600.

NOTE: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections 17518.5, 17553 and 17557(a), Government Code.

HISTORY

1. Renumbering of former section 1183.3 to new section 1183.25 filed 4–24–2008; operative 4–24–2008 pursuant to Government Code section 11343.4. Submitted to OAL for printing only (Register 2008, No. 17).

§ 1183.3. Statewide Cost Estimate. [Renumbered]

NOTE: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections 17518.5, 17553 and 17557(a), Government Code.

HISTORY

1. Editorial correction of printing error of subsection (a) (Register 86, No. 12).
2. Repealer of subsection (a), new subsections (a)–(f), subsection relettering, and amendment of NOTE filed 7–23–96; operative 7–23–96. Submitted to OAL for printing only (Register 96, No. 30).
3. Amendment of subsections (a), (b) and (d) filed 9–13–99; operative 9–13–99. Submitted to OAL for printing only pursuant to Government Code section 17527 (Register 99, No. 38).
4. Amendment filed 2–23–2004; operative 2–23–2004. Submitted to OAL for printing only (Register 2004, No. 9).
5. Amendment of section and NOTE filed 9–6–2005; operative 9–6–2005. Exempt from OAL review and submitted to OAL for printing only pursuant to Government Code section 17527(g) (Register 2005, No. 36).
6. Renumbering of former section 1183.3 to section 1183.25 filed 4–24–2008; operative 4–24–2008 pursuant to Government Code section 11343.4. Submitted to OAL for printing only (Register 2008, No. 17).

§ 1183.30. Reasonable Reimbursement Methodology and Statewide Estimate of Costs Developed by the Test Claimant and Department of Finance.

(a) Notwithstanding Government Code section 17557, within thirty (30) days of the adoption of a statement of decision on a test claim, the successful test claimant and the Department of Finance may notify the executive director in writing of their intent to follow the process described in Government Code sections 17557.1–17557.2 to develop a reasonable reimbursement methodology and statewide estimate of costs.

(b) The written notification shall provide all information and filing dates, as specified in Government Code section 17557.1, subdivision (a).

(c) At the request of the test claimant and the Department of Finance, the executive director may provide for up to four extensions of the 180–day period for submittal of the draft reasonable reimbursement methodology and proposed statewide estimate of costs for the initial claiming period and budget year. Any request must be based on good cause as defined in Section 1181.1 and also include an update of all information and filing dates provided in the original written notification submitted pursuant to Government Code section 17557.1, subdivision (a).

(d) The test claimant and Department of Finance shall submit an original and two (2) copies of any filings made pursuant to Government Code section 17557.1 and shall simultaneously serve a copy on the other parties and interested parties on the mailing list described in Section 1181.2 of these regulations.

(e) Commission staff shall notify all recipients that they shall have the opportunity to review and provide written comments or recommendations concerning the draft reasonable reimbursement methodology and proposed statewide estimate of costs within fifteen (15) days of service.

(f) Claimants, state agencies, and interested parties shall submit an original and two (2) copies of written responses to commission staff and shall simultaneously serve a copy on the other parties and interested parties on the mailing list described in Section 1181.2 of these regulations.

(g) Within seven (7) days of service of the written comments prepared by other parties and interested parties, the test claimant and Department of Finance may submit an original and two (2) copies of written rebuttals

to commission staff, and shall simultaneously serve a copy on the other parties and interested parties on the mailing list described in Section 1181.2 of these regulations.

(h) At least ten (10) days prior to the next hearing, commission staff shall issue review comments and a staff recommendation on whether the commission should approve the draft reasonable reimbursement methodology and adopt the proposed statewide estimate of costs pursuant to Government Code section 17557.2.

NOTE: Authority cited: Sections 17527(c), 17527(g) and 17532, Government Code. Reference: Sections 17557.1 and 17557.2, Government Code.

HISTORY

1. New section filed 4–24–2008; operative 4–24–2008 pursuant to Government Code section 11343.4. Submitted to OAL for printing only (Register 2008, No. 17).

§ 1183.31. Joint Request for Early Termination of Reasonable Reimbursement Methodology.

(a) The test claimant and the Department of Finance may file a joint request for early termination of a reasonable reimbursement methodology with the commission by submitting an original and two (2) copies of a request made pursuant to Government Code section 17557.2, subdivision (e), and shall simultaneously serve a copy on the other parties and interested parties on the mailing list described in Section 1181.2 of these regulations.

(b) Commission staff shall notify all recipients that they shall have the opportunity to review and provide written comments or recommendations on the joint request for early termination of a reasonable reimbursement methodology within fifteen (15) days of service.

(c) Claimants, state agencies, and interested parties shall submit an original and two (2) copies of written responses to commission staff and shall simultaneously serve a copy on the other parties and interested parties on the mailing list described in Section 1181.2 of these regulations.

(d) Within seven (7) days of service of the written comments prepared by other parties and interested parties, the test claimant and Department of Finance may submit an original and two (2) copies of written rebuttals to commission staff, and shall simultaneously serve a copy on the other parties and interested parties on the mailing list described in Section 1181.2 of these regulations.

(e) At least ten (10) days prior to the next hearing, commission staff shall issue review comments and a staff recommendation on whether the commission should approve the joint request for early termination of a reasonable reimbursement methodology pursuant to Government Code section 17557.2, subdivision (e).

(f) If the commission approves a joint request for early termination, the commission shall notify the test claimant of the duty to submit proposed parameters and guidelines to the commission pursuant to subdivision (a) of Government Code section 17557, and Section 1183.11 of these regulations.

NOTE: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections 17553(a), 17557 and 17557.2, Government Code.

HISTORY

1. New section filed 4–24–2008; operative 4–24–2008 pursuant to Government Code section 11343.4. Submitted to OAL for printing only (Register 2008, No. 17).

§ 1183.32. Expiration of Reasonable Reimbursement Methodology.

(a) At least one year before the expiration of a reasonable reimbursement methodology, commission staff shall notify the test claimant and the Department of Finance, that they may do one of the following:

1. Jointly propose amendments to the reasonable reimbursement methodology by submitting: (A) the draft reasonable reimbursement methodology, (B) A description of the steps the test claimant and the Department of Finance undertook to determine the level of support by local agencies or school districts for the draft reasonable reimbursement methodology, (C) an agreement that the reasonable reimbursement methodology developed and approved under Government Code section 17557.2 shall be in effect for a period of five years unless a different term is approved by the commission, and (D) an estimate of the mandate's annual cost for the subsequent budget year.

2. Jointly propose that the reasonable reimbursement methodology remain in effect.

3. Allow the reasonable reimbursement methodology to expire and notify the commission that the test claimant will submit proposed parameters and guidelines to the commission pursuant to subdivision (a) of Government Code section 17557 and Section 1183.11 of these regulations to replace the reasonable reimbursement methodology.

(b) Copies of the notice provided under subdivision (a) shall be simultaneously provided to the other parties and interested parties on the mailing list described in Section 1181.2 of these regulations.

(c) The test claimant and the Department of Finance may jointly propose amendments to the reasonable reimbursement methodology or the continuation of a reasonable reimbursement methodology by submitting an original and two (2) copies of a request made pursuant to Government Code section 17557.2, subdivision (f), and shall simultaneously serve a copy on the other parties and interested parties on the mailing list described in Section 1181.2 of these regulations.

(d) Commission staff shall notify all recipients that they shall have the opportunity to review and provide written comments or recommendations on the jointly proposed amendments or request for continuation of the reasonable reimbursement methodology within thirty (30) days of service.

(e) Claimants, state agencies, and interested parties shall submit an original and two (2) copies of written responses to commission staff and shall simultaneously serve a copy on the other parties and interested parties on the mailing list described in Section 1181.2 of these regulations.

(f) Within fifteen (15) days of service of the written comments prepared by other parties and interested parties, the test claimant and Department of Finance may submit an original and two (2) copies of written rebuttals to commission staff, and shall simultaneously serve a copy on the other parties and interested parties on the mailing list described in Section 1181.2 of these regulations.

(g) At least ten (10) days prior to the next hearing, commission staff shall issue review comments and a staff recommendation on whether the commission should approve the jointly proposed amendments or the continuation of a reasonable reimbursement methodology pursuant to Government Code section 17557.2, subdivision (g).

(h) Within ten (10) days of the adoption of the jointly proposed amendments or the continuation of a reasonable reimbursement methodology, the executive director shall send copies to the Office of the State Controller, and to parties and interested parties who are on the mailing list described in Section 1181.2 of these regulations.

NOTE: Authority cited: Sections 17527(g) and 17553 (a), Government Code. Reference: Sections 17553(a), 17557, 17557.1 and 17557.2, Government Code.

HISTORY

1. New section filed 4–24–2008; operative 4–24–2008 pursuant to Government Code section 11343.4. Submitted to OAL for printing only (Register 2008, No. 17).

Article 4. Mandates Recognized by the Legislature

§ 1184. Filing Requests for Reimbursement.

NOTE: Authority cited: Section 17527, Government Code. Reference: Sections 17557 and 17610, Government Code.

HISTORY

1. Editorial correction of printing error of subsection (a)(2) (Register 86, No. 12).
2. Amendment of subsection (a)(2) and NOTE filed 4–29–87; operative 5–29–87 (Register 87, No. 18).
3. Amendment of subsection (a)(2) filed 8–26–92; operative 8–26–92 (Register 92, No. 35).
4. Repealer of article 4 (sections 1184–1184.2) and repealer of section filed 9–6–2005; operative 9–6–2005. Exempt from OAL review and submitted to OAL for printing only pursuant to Government Code section 17527(g) (Register 2005, No. 36).

§ 1184.1. Statewide Cost Estimate.

NOTE: Authority cited: Section 17610, Government Code. Reference: Section 17610, Government Code.

HISTORY

1. Amendment of subsection (b) filed 8–26–92; operative 8–26–92 (Register 92, No. 35).
2. Repealer filed 9–6–2005; operative 9–6–2005. Exempt from OAL review and submitted to OAL for printing only pursuant to Government Code section 17527(g) (Register 2005, No. 36).

§ 1184.2. Certification of Statewide Cost Estimate.

NOTE: Authority cited: Sections 17576, 17577 and 17600, Government Code. Reference: Sections 17576, 17577 and 17600, Government Code.

HISTORY

1. Amendment filed 8–26–92; operative 8–26–92 (Register 92, No. 35).
2. Amendment filed 2–23–2004; operative 2–23–2004. Submitted to OAL for printing only (Register 2004, No. 9).
3. Repealer filed 9–6–2005; operative 9–6–2005. Exempt from OAL review and submitted to OAL for printing only pursuant to Government Code section 17527(g) (Register 2005, No. 36).

Article 4.5. State Mandates Apportionment System

§ 1184.5. Definitions: State Mandates Apportionment System.

(a) Request for Inclusion. A Request for Inclusion is a factual statement about a mandated cost program and a petition for a review of the described program by the Commission on State Mandates. Such review is intended to result in a decision whether or not to include the program in the State Mandates Apportionment System.

(b) Stable costs. Stable costs are those costs incurred by local agencies or school districts as a result of implementing a mandated cost program which, when reviewed on a statewide basis over a three year period, have not fluctuated significantly.

(c) Request for Removal. A Request for Removal is a factual statement about significant modifications or amendments to a program which is part of the State Mandates Apportionment System. The statement is intended to result in the discontinuance of such program in the State Mandates Apportionment System.

NOTE: Authority and reference cited: Section 17615, Government Code.

HISTORY

1. New Article 4.5 (Sections 1184.5–1184.11) filed 4–21–86; effective upon filing pursuant to Government Code Section 11346.2(d) (Register 86, No. 17).

§ 1184.6. Request for Inclusion.

(a) Any local agency, school district, the Department of Finance or the State Controller's Office may request that the commission review a mandated cost program(s) for possible inclusion in the State Mandates Apportionment System in accordance with Section 17615.1 of the Government Code.

(b) In order to obtain a review and determination regarding inclusion in the system, a local agency, school district or state agency must file a "Request for Inclusion" with the commission.

(c) The request for inclusion must contain at least the following:

(1) the chapter number of the law which established the mandated cost program(s).

(2) a detailed narrative describing the mandated cost program with an explanation of the reasons why the mandated cost program should be included in the State Mandates Apportionment System.

(3) any other pertinent information which will substantiate the request or which would have a bearing on the decision of the commission in this matter.

(d) The commission shall consider the recommendation submitted from the Controller for each new mandate submitted for inclusion in the State Mandates Apportionment System in accordance with Section 17615.4(c) of the Government Code.

(e) Requests for inclusion will be considered incomplete if any of the preceding elements or documents required in subsection (c) of this section are illegible or not included. Incomplete requests for inclusion shall be returned to the requestor for completion.

(f) Requests for inclusion filings and any state agency recommendations shall be subject to the requirements of Article 7 of these regulations beginning at Section 1187.

NOTE: Authority and reference cited: Sections 17615 and 17615.1, Government Code.

§ 1184.7. Adoption of Finding for Request for Inclusion.

(a) The commission, after reviewing the request for inclusion and conducting at least one (1) hearing in accordance with Article 7 of these regulations, shall adopt a finding that the mandated program(s) will or will not be included in the State Mandates Apportionment System.

(b) The primary criteria to be used by the commission in making such a determination will include a review of the mandated program to determine if the program has a history of stable costs for most claimants, if the mandated program has been recently modified and if inclusion would accurately reflect the costs of the state mandated program.

(c) Upon adoption of a finding that a mandated program should be included in the State Mandates Apportionment System, the commission shall direct the Controller to include the program in the system.

NOTE: Authority and reference cited: Section 17615.1, Government Code.

§ 1184.8. Request for Removal.

(a) Any local agency, school district or state agency may request that the commission review a mandated program included in the State Mandates Apportionment System that has been modified or amended by the Legislature or an executive order for possible removal of the program from the system in accordance with Section 17615.7 of the Government Code.

(b) In order to obtain a review and determination regarding removal of a program from the system, a local agency, school district or state agency must file a "Request for Removal" with the commission.

(c) The request for removal must contain at least the following elements:

(1) the chapter number or executive order of the law which established the mandated cost program.

(2) the chapter number of the law or the executive order which significantly modified or amended the costs of the program or a detailed description of the circumstances or events which have caused such changes.

(3) a detailed narrative describing the mandated cost program with an explanation of the reasons why the mandated program should no longer be included in the State Mandates Apportionment System.

(4) any other information which will substantiate the request or which would have a bearing on the decision of the commission in this matter.

(d) Requests for Removal will be considered incomplete if any of the preceding elements or documents required in subsection (c) of this section are illegible or not included. Incomplete Requests for Removal shall be returned to the requestor for completion.

(e) Request for removal filings and any state agency recommendations shall be subject to the requirements of Article 7 of these regulations beginning at Section 1187.

NOTE: Authority and reference cited: Section 17615.7, Government Code.

§ 1184.9. Adoption of Finding for Request for Removal.

(a) The commission, after reviewing the request for removal and conducting at least one (1) hearing in accordance in Article 7 of these regulations, shall adopt a finding that the mandated program(s) will or will not continue to be included in the State Mandates Apportionment System.

(b) The primary criteria to be used by the commission in making such a determination will include whether the mandated program was significantly modified or amended by the Legislature or by executive order so as to affect the ongoing costs of the program in a way that the historical costs of the program are no longer an accurate reflection of continuing costs.

(c) Upon adoption of a finding that a mandated program should be removed from the system, the commission shall direct the Controller to remove the program from the system. In that direction to the Controller, the

commission shall specify if the program will be removed temporarily or for an indefinite period of time.

NOTE: Authority and reference cited: Section 17615.5, Government Code.

§ 1184.10. Reviewing an Apportionment or Base Year Entitlement.

(a) Upon request of a local agency, school district or state agency the commission shall review the apportionment or base year entitlement pursuant to Section 17615.8(a) of the Government Code.

(b) In order to obtain a review of an apportionment or base year entitlement a "Request for Review" shall be filed with the commission.

(c) The request for review shall contain at least the following elements:

(1) Identification of the mandated program(s) that is alleged to require review.

(2) A detailed narrative describing the need to modify the apportionment or base year entitlement.

(3) A statement to the effect that the other mandated programs included in the local agency or school district's apportionment are not overfunded in an amount sufficient to offset any underfunding.

(4) Cost information that outlines the amount of the funding for the total apportionment and the calculations necessary to show that the program(s) needing modification either under or over reimburse the local agency or school district's actual costs by 20 percent or by one thousand dollars ($1,000), whichever is less.

NOTE: Authority and reference cited: Section 17615.8, Government Code.

§ 1184.11. Adjustment to Apportionment.

(a) The commission, after reviewing an apportionment or base year entitlement and conducting at least one (1) hearing in accordance with Article 7 of these regulations, shall adopt a finding that the apportionment or base year entitlement will or will not be adjusted.

(b) If the commission determines that a local agency or school district's apportionment falls short of reimbursing for all mandates upon which the apportionment or base year entitlement is based by 20 percent or by one thousand dollars ($1,000), whichever is less, then the commission shall direct the Controller to adjust the apportionment accordingly.

(c) If the commission determines that a local agency or school district's apportionment adequately reflects the costs incurred by the local agency or school district for all mandates upon which that apportionment is based, the commission may, in its discretion, direct the Controller to withhold the costs of the commission's review from the next apportionment to the local agency or school district. Such a determination will be made only when the commission determines that the request to review an apportionment was frivolous and without merit.

NOTE: Authority and reference cited: Section 17615.9, Government Code.

Article 5. Incorrect Reduction Claims

§ 1185. Incorrect Reduction Claim Filing.

(a) To obtain a determination that the Office of State Controller incorrectly reduced a reimbursement claim, a claimant shall file an "incorrect reduction claim" with the commission.

(b) All incorrect reduction claims shall be filed with the commission no later than three (3) years following the date of the Office of State Controller's final state audit report, letter, remittance advice, or other written notice of adjustment notifying the claimant of a reduction.

(c) An incorrect reduction claim shall pertain to alleged incorrect reductions in a reimbursement claim(s) filed by one claimant. The incorrect reduction claim may be for more than one fiscal year.

(d) All incorrect reduction claims, or amendments thereto, shall be filed on a form provided by the commission.

(e) All incorrect reduction claims, or amendments thereto, shall contain at least the following elements and documents:

(1) A copy of the Office of State Controller's claiming instructions that were in effect during the fiscal year(s) of the reimbursement claim(s).

(2) A written detailed narrative that describes the alleged incorrect reduction(s). The narrative shall include a comprehensive description of the reduced or disallowed area(s) of cost(s).

(3) If the narrative describing the alleged incorrect reduction(s) involves more than discussion of statutes or regulations or legal argument and utilizes assertions or representations of fact, such assertions or representations shall be supported by testimonial or documentary evidence and shall be submitted with the claim. All documentary evidence must be authenticated by declarations under penalty of perjury signed by persons who are authorized and competent to do so and be based upon the declarant's personal knowledge or information or belief.

(4) A copy of any final state audit report, letter, remittance advice, or other written notice of adjustment from the Office of State Controller that explains the reason(s) for the reduction or disallowance.

(5) A copy of the subject reimbursement claims the claimant submitted to the Office of State Controller.

(6) An incorrect reduction claim, or amendment thereto, shall be signed at the end of the document, under penalty of perjury by the claimant or its authorized representative, with the declaration that the incorrect reduction claim is true and complete to the best of the declarant's personal knowledge or information or belief. The date signed, the declarant's title, address, telephone number, and, if available, electronic mail address and facsimile number, shall be included.

(7) The claimant shall file one original incorrect reduction claim, or amendment thereto, and accompanying documents with the commission. The original shall be unbound and single–sided, without tabs, and include a table of contents.

(8) The claimant shall also file two (2) copies of the incorrect reduction claim, or amendment thereto, and accompanying documents with the commission. The copies may be two–sided and shall not include tabs.

(f) Within ten (10) days of receipt of an incorrect reduction claim, commission staff shall notify the claimant if the incorrect reduction claim is complete or incomplete. Incorrect reduction claims will be considered incomplete if any of the elements required in subsections (c) through (e) of this section are illegible or not included. Incomplete incorrect reduction claims shall be returned to the claimant. If a complete incorrect reduction claim is not received by the commission within thirty (30) days from the date the incomplete claim was returned to the claimant, the commission shall deem the filing to be withdrawn.

NOTE: Authority cited: Section 17527(g), Government Code. Reference: Sections 17551(d) and 17553(d), Government Code.

HISTORY

1. New Article 5 (Sections 1185 and 1185.1) filed 12–13–85; effective upon filing pursuant to Government Code Section 11346.2(d) (Register 85, No. 50).
2. Amendment of NOTE filed 4–29–87; operative 5–29–87 (Register 87, No. 18).
3. Amendment of subsections (a), (b) and (c)(4)–(5) and NOTE filed 7–23–96; operative 7–23–96. Submitted to OAL for printing only (Register 96, No. 30).
4. Amendment of section and NOTE filed 9–13–99; operative 9–13–99. Submitted to OAL for printing only pursuant to Government Code section 17527 (Register 99, No. 38).
5. Amendment of article heading and amendment of section and NOTE filed 4–21–2003; operative 4–21–2003. Submitted to OAL for printing only pursuant to Government Code section 17527(g) (Register 2003, No. 17).
6. Amendment of section and NOTE filed 5–8–2007; operative 5–8–2007 pursuant to Government Code section 11343.4. Submitted to OAL for printing only (Register 2007, No. 19).

§ 1185.01. Review of Incorrect Reduction Claims.

NOTE: Authority cited: Section 17527(g), Government Code. Reference: Section 17551(b), Government Code.

HISTORY

1. New section filed 7–23–96; operative 7–23–96. Submitted to OAL for printing only (Register 96, No. 30).
2. Amendment of subsections (a) and (b) filed 9–13–99; operative 9–13–99. Submitted to OAL for printing only pursuant to Government Code section 17527 (Register 99, No. 38).
3. Amendment of section and NOTE filed 4–21–2003; operative 4–21–2003. Submitted to OAL for printing only pursuant to Government Code section 17527(g) (Register 2003, No. 17).
4. Renumbering of former section 1185.01 to section 1185.1 filed 5–8–2007; operative 5–8–2007 pursuant to Government Code section 11343.4. Submitted to OAL for printing only (Register 2007, No. 19).

§ 1185.02. Review of Completed Incorrect Reduction Claims and Preparation of Staff Analysis.

NOTE: Authority cited: Section 17527(g), Government Code. Reference: Section 17551(b), Government Code.

HISTORY

1. New section filed 9–13–99; operative 9–13–99. Submitted to OAL for printing only pursuant to Government Code section 17527 (Register 99, No. 38).
2. Renumbering of former section 1185.02 to section 1185.03 and new section 1185.02 filed 4–21–2003; operative 4–21–2003. Submitted to OAL for printing only pursuant to Government Code section 17527(g) (Register 2003, No. 17).
3. Renumbering of former section 1185.02 to section 1185.5 filed 5–8–2007; operative 5–8–2007 pursuant to Government Code section 11343.4. Submitted to OAL for printing only (Register 2007, No. 19).

§ 1185.03. Withdrawal of Incorrect Reduction Claims.

NOTE: Authority cited: Section 17527(g), Government Code. Reference: Section 17551(b), Government Code.

HISTORY

1. Renumbering of former section 1185.02 to section 1185.03 filed 4–21–2003; operative 4–21–2003. Submitted to OAL for printing only pursuant to Government Code section 17527(g) (Register 2003, No. 17).
2. Renumbering of former section 1185.03 to section 1185.6 filed 5–8–2007; operative 5–8–2007 pursuant to Government Code section 11343.4. Submitted to OAL for printing only (Register 2007, No. 19).

§ 1185.1. Review of Incorrect Reduction Claims.

(a) Within ten (10) days of receipt of a complete incorrect reduction claim, commission staff shall provide a copy of the claim to the Office of State Controller.

(b) Commission staff shall notify the Office of State Controller that written oppositions or recommendations and supporting documentation in connection with an incorrect reduction claim shall be filed no more than ninety (90) days from the date the copy of the claim is provided to the Office of State Controller. The Office of State Controller shall simultaneously serve a copy of any opposition or recommendation regarding the claim on the claimant and their designated representative or, if a mailing list is provided by the commission, a copy of any opposition or recommendation on the claim, must be filed on all parties and interested parties on the mailing list. Proof of service must be filed with the oppositions or recommendations and supporting documentation pursuant to section 1181.2. If the oppositions or recommendations regarding an incorrect reduction claim involve more than the discussion of statutes, regulations or legal argument and utilizes assertions or representations of fact, such assertions or representations shall be supported by documentary evidence and shall be submitted with the response. All documentary evidence must be authenticated by declarations under penalty of perjury signed by persons who are authorized and competent to do so and be based upon the declarant's personal knowledge or information or belief.

(c) The claimant and interested parties may submit written rebuttals to the Office of State Controller's comments. Written rebuttals shall be filed with the commission within thirty (30) days of service of the Office of State Controller's comments. The claimant shall simultaneously serve a copy of the written rebuttal on the Office of State Controller or, if a mailing list is provided by the commission, a copy of the rebuttal, must be served on all parties and interested parties on the mailing list. Proof of service shall be filed with the written rebuttal and supporting documentation pursuant to section 1181.2. If the written rebuttal involves more than discussion of statutes, regulations or legal argument and utilizes assertions or representations of fact, such assertions or representations shall be supported by documentary evidence and shall be submitted with the rebuttal. All documentary evidence must be authenticated by declarations under penalty of perjury signed by persons who are authorized and competent to do so and be based upon the declarant's personal knowledge or information or belief.

NOTE: Authority cited: Section 17527(g), Government Code. Reference: Sections 17551(d) and 17553(d), Government Code.

HISTORY

1. New section filed 7–23–96; operative 7–23–96. Submitted to OAL for printing only (Register 96, No. 30).
2. Amendment of subsections (a) and (b) filed 9–13–99; operative 9–13–99. Submitted to OAL for printing only pursuant to Government Code section 17527 (Register 99, No. 38).
3. Amendment of section and NOTE filed 4–21–2003; operative 4–21–2003. Submitted to OAL for printing only pursuant to Government Code section 17527(g) (Register 2003, No. 17).
4. Renumbering of former section 1185.01 to section 1185.1 and amendment of NOTE filed 5–8–2007; operative 5–8–2007 pursuant to Government Code section 11343.4. Submitted to OAL for printing only (Register 2007, No. 19).

§ 1185.2. Consolidation of Claims Initiated by an Individual Claimant; Intent to Join a Consolidated Claim.

(a) On behalf of a class of claimants, an individual claimant may initiate the consolidation of claims alleging an incorrect reduction as described in Government Code section 17558.7, if all of the following apply:

(1) The method, act, or practice that the claimant alleges led to the reduction has led to similar reductions of other parties' claims, and all of the claims involve common questions of law or fact.

(2) The common questions of law or fact among the claims predominate over any matter affecting only an individual claim.

(3) The consolidation of similar claims by individual claimants would result in consistent decisionmaking by the commission.

(4) The claimant filing the consolidated claim would fairly and adequately protect the interests of the other claimants.

(b) A claimant that seeks to file a consolidated incorrect reduction claim shall notify the commission of its intent at the time of filing on a form provided by the commission.

(c) Within ten (10) days of receipt of a consolidated incorrect reduction claim, commission staff shall notify the claimant if the consolidated incorrect reduction claim is complete or incomplete pursuant to section 1185, and request the Office of the State Controller to provide the commission, within thirty (30) days, a list of claimants for whom the Controller has reduced similar claims under the same mandate, and the date each claimant was notified of an adjustment.

(d) Upon receipt of the list from the Office of the State Controller, the commission shall notify the list of other claimants experiencing similar reductions by the Controller under the same mandate and other interested parties of the original claimant's intent to consolidate an incorrect reduction claim.

(e) Within thirty (30) days of receipt of the commission's notice regarding the original claimant's intent to consolidate an incorrect reduction claim, any other eligible claimant may, on a form provided by the commission, file a notice of intent to join the consolidated incorrect reduction claim.

(f) All notices of intent to join a consolidated incorrect reduction claim shall comply with section 1185(b) and contain at least the following elements and documents:

(1) A copy of the final state audit report, letter, remittance advice, or other written notice of adjustment from the Office of State Controller that explains the reason(s) for the reduction or disallowance.

(2) A copy of the subject reimbursement claims submitted to the Office of State Controller.

(3) A notice of intent to join a consolidated incorrect reduction claim shall include a certification by the joint–claimant authorizing the original claimant to act as its representative in the consolidated incorrect recuction claim, and a declaration under penalty of perjury that the filing is true and complete to the best of the declarant's personal knowledge or information or belief. The date signed, the declarant's title, address, telephone number, and, if available, electronic mail address and facsimile number, shall be included.

(4) The joint–claimant shall file one original notice of intent to join and accompanying documents with the commission. The original shall be unbound and single–sided, without tabs.

(5) The joint–claimant shall also file two (2) copies of the notice of intent to join and accompanying documents with the commission. The copies may be two–sided and shall not include tabs.

(g) Within ten (10) days of receipt of a notice of intent to join a consolidated incorrect reduction claim, commission staff shall notify the joint–claimant if the notice of intent to join is complete or incomplete. Notices of intent to join a consolidated incorrect reduction claim will be consid-

ered incomplete if any of the elements required in subsection (f) of this section are illegible or not included. Incomplete notices of intent shall be returned to the joint–claimant. If a complete notice of intent to join a consolidated incorrect reduction claim is not received by the commission within thirty (30) days from the date the incomplete notice of intent was returned to the joint–claimant, the commission shall deem the filing to be withdrawn.

NOTE: Authority cited: Sections 17527(g) and 17558.7(g), Government Code. Reference: Section 17558.7, Government Code.

HISTORY

1. New section filed 5–8–2007; operative 5–8–2007 pursuant to Government Code section 11343.4. Submitted to OAL for printing only (Register 2007, No. 19). For prior history, see Register 2003, No. 17.

§ 1185.3. Opting Out of a Consolidated Incorrect Reduction Claim.

Pursuant to Government Code section 17558.7(f), each claimant that files an intent to join a consolidated incorrect reduction claim may opt out and not be bound by any determination made on the consolidated claim.

(a) To opt out of a consolidated incorrect reduction claim, claimants shall file a written notice with the commission within fifteen (15) days of service of the Office of State Controller's comments. A copy of the notice must be served on all parties and interested parties on the mailing list. Proof of service shall be filed with the notice pursuant to section 1181.2.

(1) No later than one (1) year after opting out, or within the statute of limitations under section 1185(b), whichever is later, a claimant that opts out of a consolidated claim shall file an individual incorrect reduction claim pursuant to commission requirements in order to preserve its right to challenge a reduction made by the Controller on that same mandate.

(2) If a claimant opts out of a consolidated incorrect reduction claim and an individual incorrect reduction claim for that entity is already on file with the commission, the individual filing is automatically reinstated.

NOTE: Authority cited: Sections 17527(g) and 17558.7(g), Government Code. Reference: Section 17558.7, Government Code.

HISTORY

1. New section filed 5–8–2007; operative 5–8–2007 pursuant to Government Code section 11343.4. Submitted to OAL for printing only (Register 2007, No. 19). For prior history, see Register 99, No. 38.

§ 1185.4. Executive Director's Authority to Consolidate Incorrect Reduction Claims.

(a) The executive director may consolidate part or all of any incorrect reduction claim with another incorrect reduction claim, if necessary to ensure the complete, fair, or timely consideration of any incorrect reduction claim.

(1) At least thirty (30) days before the action is taken, the executive director shall simultaneously serve on the parties and interested parties on the mailing list described in section 1181.2 of these regulations a notice of any proposed action to consolidate.

(2) During the thirty (30) day notice period, a claimant may serve and file a written request that an individual incorrect reduction claim be severed from the proposed consolidation. Timely requests to sever shall be approved by the executive director.

(3) Late requests for severing an individual incorrect reduction claim shall be denied. Any party may appeal to the commission for review of the actions and decisions of the executive director under this section pursuant to section 1181 of these regulations.

NOTE: Authority cited: Sections 17527(g) and 17558.8(b), Government Code. Reference: Sections 17530, 17554 and 17558.8, Government Code.

HISTORY

1. New section filed 5–8–2007; operative 5–8–2007 pursuant to Government Code section 11343.4. Submitted to OAL for printing only (Register 2007, No. 19).

§ 1185.5. Review of Completed Incorrect Reduction Claims and Preparation of Staff Analysis.

(a) Before hearing an individual or consolidated incorrect reduction claim, commission staff shall prepare a written analysis of the incorrect reduction claim that shall include, but not be limited to, a review of any statements filed by the Office of State Controller and the claimant's rebuttal. The analysis shall also include a staff recommendation on whether the claimant's reimbursement claim was incorrectly reduced.

(b) At least eight (8) weeks before the hearing or at such other time as required by the executive director or stipulated to by the claimant and the Office of State Controller, commission staff shall distribute a draft staff analysis to the Office of State Controller and the claimant and their designated representative, or, if a mailing list is provided by the commission, a copy shall be distributed to all parties and interested parties on the mailing list.

(c) The Office of State Controller and the claimant may file written comments on the draft staff analysis with the commission. Written comments shall be filed with the commission at least five (5) weeks before the hearing or as otherwise stipulated to by the parties or determined and publicized by the executive director. If a mailing list is provided by the commission, a copy of the comments must be served on all parties and interested parties on the mailing list. Written comments shall be reviewed by staff and may be incorporated into the final staff analysis presented to the commission.

NOTE: Authority cited: Section 17527(g), Government Code. Reference: Section 17551(d), Government Code.

HISTORY

1. Renumbering of former section 1185.02 to section 1185.5, including amendment of section and NOTE, filed 5–8–2007; operative 5–8–2007 pursuant to Government Code section 11343.4. Submitted to OAL for printing only (Register 2007, No. 19).

§ 1185.6. Withdrawal of Incorrect Reduction Claims.

An incorrect reduction claim may be withdrawn by written application any time before a decision is adopted or by oral application at the time of hearing. If such application is made the commission may issue a decision dismissing the claim.

NOTE: Authority cited: Section 17527(g), Government Code. Reference: Section 17551(d), Government Code.

HISTORY

1. Renumbering of former section 1185.03 to section 1185.6, including amendment of NOTE, filed 5–8–2007; operative 5–8–2007 pursuant to Government Code section 11343.4. Submitted to OAL for printing only (Register 2007, No. 19).

§ 1185.7. Reinstatement of Costs.

If the commission determines that a reimbursement claim was incorrectly reduced, the commission shall send the statement of decision to the Office of State Controller and request that the Office of State Controller reinstate the costs that were incorrectly reduced.

NOTE: Authority cited: Section 17527(g), Government Code. Reference: Section 17551(d), Government Code.

HISTORY

1. Renumbering of former section 1185.1 to new section 1185.7, including amendment of NOTE, filed 5–8–2007; operative 5–8–2007 pursuant to Government Code section 11343.4. Submitted to OAL for printing only (Register 2007, No. 19).

[The next page is 212.3.]

Article 6. Review of Office of State Controller's Claiming Instructions

§ 1186. Review of Office of State Controller's Claiming Instructions.

(a) Upon request of a local agency or school district, the commission shall review claiming instructions issued by the Office of State Controller.

(b) A request to review claiming instructions shall include the following:

(1) A copy of the disputed claiming instructions.

(2) If available, correspondence or other documentation that verifies the local agency or school district sought to resolve the dispute through the Office of State Controller.

(3) A narrative that details the suggested changes(s) and the reasons why the local agency or school district finds the claiming instructions need to be modified.

(4) The name, address, telephone number, and if available the facsimile number and electronic mail address of the agency contact person.

(c) An original and three (3) copies of the request to review claiming instructions shall be submitted to the commission by the local agency or school district.

(d) Within ten (10) days of receipt of a request to review claiming instructions, commission staff shall notify the local agency or school district that submitted the request if the submittal is complete or incomplete. A request to review the claiming instructions shall be considered incomplete if any of the elements required in subdivision (b) or (c) of this section are illegible or not included. Incomplete requests shall be returned to the local agency or school district. If a complete request is not received by the commission within thirty (30) days from the date the incomplete request was returned, the commission shall deem the request to be withdrawn.

(e) Within ten (10) days of receipt of a request to review claiming instructions, commission staff shall send a copy to the Department of Finance, the Office of State Controller, affected state agencies and interested parties who are on the mailing list. Commission staff shall also notify the affected state agencies and interested parties on the mailing list that they may review and provide written comments or recommendations concerning the request to review claiming instructions within thirty (30) days of service.

(f) State agencies and interested parties shall submit an original and two (2) copies of written responses to the commission. They shall simultaneously serve a copy on the local agency or school district that filed the request, the other parties and interested parties who are on the mailing list. Proof of service on the local agency or school district that filed the request and their representative must be filed with the oppositions or recommendations and supporting documentation pursuant to section 1181.2.

(g) Within thirty (30) days of service of the comments and recommendations by state agencies and interested parties, the local agency or school district that filed the request to review claiming instructions may submit an original and two (2) copies of a written rebuttal to the commission. The local agency or school district shall simultaneously serve a copy on the other parties and interested parties who are on the mailing list.

(h) The commission shall conduct at least one (1) hearing in accordance with Article 8 of these regulations on the request to review claiming instructions.

(i) If the commission determines that the claiming instructions need to be modified, the commission shall direct the Office of State Controller to modify the claiming instructions to conform to the parameters and guidelines.

(j) An approved change to the claiming instructions shall be subject to the following schedule:

(1) A request for review filed before the deadline for initial claims as specified in the claiming instructions shall apply to all years eligible for reimbursement as defined in the original parameters and guidelines.

(2) A request for review filed after the initial claiming deadline must be submitted on or before January 15 following a fiscal year in order to establish eligibility for reimbursement for that fiscal year.

(k) A request to review claiming instructions may be withdrawn by written application any time before a decision is adopted or by oral application at the time of hearing.

NOTE: Authority cited: Sections 17527(g) and (h), Government Code. Reference: Sections 17560 and 17571, Government Code.

HISTORY

1. Editorial correction of printing error of subsection (c)(4) (Register 86, No. 12).
2. Repealer of article 6 (sections 1186–1186.3) and section filed 7–23–96; operative 7–23–96. Submitted to OAL for printing only (Register 96, No. 30).
3. Amendment of article 6 heading and new article 6 (section 1186) and new section filed 4–21–2003; operative 4–21–2003. Submitted to OAL for printing only pursuant to Government Code section 17527(g) (Register 2003, No. 17). For prior history of article 6 (sections 1186–1186.3), see Register 96, No. 30.

Article 6.5. Applications for a Finding of Significant Financial Distress

§ 1186.5. Reduction in Aid Levels; Definitions.

When the county has made a compelling case that basic county services cannot be maintained without a reduction in the level of aid established by Welfare and Institutions Code section 17000.5, the commission shall make a finding of significant financial distress.

In making such a finding, the following definitions shall apply:

(a) "Application" means a county application filed pursuant to this article requesting the commission determine that the county has made a compelling case that basic county services cannot be maintained without a reduction in the level of General Assistance aid established by Welfare and Institutions Code section 17000.5, and finding that as a result, the county is in significant financial distress, as defined in Welfare and Institutions Code section 17000.6.

(b) "Applicant" means the county that filed the request for a finding of significant financial distress.

(c) A "compelling case" sufficient to cause a finding of significant financial distress must be established by clear and convincing evidence.

(d) "Basic county services" means those services which are fundamental or essential. Such services shall include, but are not limited to, those services required by state or federal law, and may vary from county to county.

(e) "Maintained" means the level of service which the county must provide in order to adequately or effectively furnish basic county services.

NOTE: Authority cited: Section 17527(g), Government Code; and Section 17000.6, Welfare and Institutions Code. Reference: Section 17000.6, Welfare and Institutions Code.

HISTORY

1. New article 6.5 and section filed 12–16–93 as an emergency; operative 1–1–94. Submitted to OAL for printing only pursuant to Government Code section 17527(g) (Register 93, No. 51). A Certificate of Compliance must be transmitted to OAL by 5–1–94 or emergency language will be repealed by operation of law on the following day.
2. New article 6.5 and section refiled 4–26–94 as an emergency; operative 4–26–94 (Register 94, No. 17). Submitted to OAL for printing only. A Certificate of Compliance must be transmitted to OAL by 8–24–94 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 4–26–94 order transmitted to OAL 6–10–94 and filed 7–14–94 (Register 94, No. 28).
4. New subsections (a) and (b) and subsection relettering filed 3–6–2001; operative 4–5–2001. Submitted to OAL for printing only pursuant to Government Code section 17527(g) (Register 2001, No. 10).

§ 1186.51. Filing of an Application for a Finding of Significant Financial Distress.

(a) Pursuant to Welfare and Institutions Code section 17000.6, in order for the board of supervisors of any county to obtain a finding of signifi-

cant financial distress, the board of supervisors must submit a written application to the Commission on State Mandates.

(b) The applicant shall file an original and seven (7) copies of the application, including supporting documents, with the commission.

(c) All applications shall contain at least the following:

(1) A table of contents, indicating page numbers.

(2) A copy of a resolution from the county board of supervisors stating that compliance with the standards set forth in Welfare and Institutions Code section 17000.5 will result in significant financial distress to the county for a specified period of time, up to 36 months.

(3) A written narrative, including a summary, detailing the relevant financial or other budgetary information and documents necessary for a county to make a compelling case that basic county services, including public safety, cannot be maintained without a reduction in the standard of aid as provided in Welfare and Institutions Code section 17000.5. The narrative shall also include:

(A) The monthly caseload of General Assistance recipients for each of the 12 months preceding the date the application is filed.

(B) The current monthly rate of the General Assistance Standard of Aid.

(C) The proposed reduced rate of the General Assistance Standard of Aid.

(D) An overview of county finances, including, but not limited to county revenue sources; budget reserve data; budget expenditures; mandated expenditures, and maintenance of effort costs.

(E) A detailed summary of program needs and expenditure flexibility, including, but not limited to department–by–department data on unmet program needs for basic county services.

(F) The County's total population at the time the application is filed, and the total county population for the two fiscal years prior to the year in which the application was filed.

(d) The written narrative shall be submitted under penalty of perjury. In addition, the financial and other budgetary documents shall be certified under penalty of perjury.

(e) Each page of the application, including all supporting documentation, shall be consecutively numbered.

(f) The original application, including all supporting documentation, shall be unbound and single–sided.

(g) The executive director shall notify an applicant within 10 days of receipt of an application whether its application is incomplete. If the application is incomplete, the executive director may return the application to the county. An application shall be considered incomplete if the elements in (b) through (f) of this section have not been satisfied, are illegible or are not included. The requirements for commission public hearings and decisions, as set forth in subdivision (c), of Welfare and Institutions Code section 17000.6, apply only to complete applications.

(h) Within ten days of receipt of a completed application, the executive director shall notify the applicant that the application is complete, and notify the applicant of the schedule. The executive director shall also send the application to interested persons located in the applicant county.

(i) Prior to filing an application, a county may request a tentative date for conducting the hearing in the county. If a complete application is not received by a specified date, a new tentative hearing date may be set.

NOTE: Authority cited: Section 17527(g), Government Code; and Section 17000.6, Welfare and Institutions Code. Reference: Section 17000.6, Welfare and Institutions Code.

HISTORY

1. New section filed 12–16–93 as an emergency; operative 1–1–94. Submitted to OAL for printing only pursuant to Government Code section 17527(g) (Register 93, No. 51). A Certificate of Compliance must be transmitted to OAL by 5–1–94 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 4–26–94 as an emergency; operative 4–26–94 (Register 94, No. 17). Submitted to OAL for printing only. A Certificate of Compliance must be transmitted to OAL by 8–24–94 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 4–26–94 order transmitted to OAL 6–10–94 with amendment of subsection (b)(2) and filed 7–14–94 (Register 94, No. 28).
4. Amendment filed 1–26–99; operative 1–26–99. Submitted to OAL for printing only (Register 99, No. 5).
5. Amendment filed 3–6–2001; operative 4–5–2001. Submitted to OAL for printing only pursuant to Government Code section 17527(g) (Register 2001, No. 10).

§ 1186.52. Extension of Period for Preliminary and Final Decision and Current Period of Financial Distress.

(a) If an application is filed while another county's application is pending, the executive director may extend both the preliminary decision period up to 120 days and the final decision period up to 150 days from the filing date of the application, unless otherwise provided in the current Budget Act. If the preliminary and final decision periods are extended, any current period of significant financial distress of the applicant that has been set, pursuant to subdivision (b), of Welfare and Institutions Code Section 17000.6, shall also be extended for the same period.

(b) Within ten (10) days of receipt of a county's application, the executive director shall provide written notice to the applicant of extensions of the preliminary decision and final decision periods and of any current period of significant financial distress of the applicant.

NOTE: Authority cited: Stats. 1998, c. 324, Prov. (2), p. 622 (and subsequent Budget Acts); Section 17527(g), Government Code; and Section 17000.6(b), Welfare and Institutions Code. Reference: Section 17000.6(c), Welfare and Institutions Code.

HISTORY

1. New section filed 1–26–99; operative 1–26–99. Submitted to OAL for printing only (Register 99, No. 5).
2. Amendment filed 3–6–2001; operative 4–5–2001. Submitted to OAL for printing only pursuant to Government Code section 17527(g) (Register 2001, No. 10).

§ 1186.53. Notice.

(a) Upon receipt of a complete application for a finding of significant financial distress, the commission shall provide to the applicant a written 30–day notice of the hearing, to be held in the county.

(b) The notice shall be publicly posted by the applicant at the county court house and one county welfare office where General Assistance recipients are generally present. The commission shall publish two notices in a newspaper of general circulation in the county. The first notice shall be published at least 30 days prior to the hearing date. The second notice shall be published at least ten days prior to the hearing date. The cost of publishing the notices shall be paid for by the commission.

NOTE: Authority cited: Section 17527(g), Government Code; and Section 17000.6, Welfare and Institutions Code. Reference: Section 17000.6, Welfare and Institutions Code.

HISTORY

1. Renumbering and amendment of former section 1186.6 to section 1186.53 filed 3–6–2001; operative 4–5–2001. Submitted to OAL for printing only pursuant to Government Code section 17527(g) (Register 2001, No. 10).

§ 1186.54. Pre–Hearing Conference.

A pre–hearing conference may be scheduled by the executive director for the purpose of identifying issues and determining methods of resolving such issues. The county, and other parties known to have an interest in the county's application shall be invited to participate. This conference shall not limit the issues that can be presented to or considered by the commission at public hearing.

NOTE: Authority cited: Section 17527(g), Government Code; and Section 17000.6, Welfare and Institutions Code. Reference: Section 17000.6, Welfare and Institutions Code.

HISTORY

1. Renumbering and amendment of former section 1186.61 to section 1186.54 filed 3–6–2001; operative 4–5–2001. Submitted to OAL for printing only pursuant to Government Code section 17527(g) (Register 2001, No. 10).

§ 1186.55. Assignment to Hearing Panels/Hearing Officers.

The chairperson may assign an application to a hearing panel consisting of one or more members of the commission, which shall act on behalf of the commission, or to a hearing officer for hearing and preparation of a preliminary decision. Assignments by the chairperson of members on such hearing panels shall be rotated among the members with the compo-

sition of the members so assigned being varied and changed to assure that there shall never be a fixed and continued composition of members.

NOTE: Authority cited: Section 17527(g), Government Code; and Section 17000.6, Welfare and Institutions Code. Reference: Section 17000.6, Welfare and Institutions Code.

HISTORY

1. Renumbering of former section 1186.62 to section 1186.55 filed 3–6–2001; operative 4–5–2001. Submitted to OAL for printing only pursuant to Government Code section 17527(g) (Register 2001, No. 10).

§ 1186.6. Request for Supplemental Information.

(a) The executive director may request supplemental information from the applicant to assist the commission in its review and analysis of the application. The applicant shall provide the supplemental information under the timeline established by the executive director.

(b) The supplemental information shall be submitted under penalty of perjury. Any attached financial or other budgetary documents shall be certified under penalty of perjury.

NOTE: Authority cited: Section 17527(g), Government Code; and Section 17000.6, Welfare and Institutions Code. Reference: Section 17000.6, Welfare and Institutions Code.

HISTORY

1. New section filed 12–16–93 as an emergency; operative 1–1–94. Submitted to OAL for printing only pursuant to Government Code section 17527(g) (Register 93, No. 51). A Certificate of Compliance must be transmitted to OAL by 5–1–94 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 4–26–94 as an emergency; operative 4–26–94 (Register 94, No. 17). Submitted to OAL for printing only. A Certificate of Compliance must be transmitted to OAL by 8–24–94 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 4–26–94 order transmitted to OAL 6–10–94 with amendment of subsection (b) and filed 7–14–94 (Register 94, No. 28).
4. Renumbering of former section 1186.6 to section 1186.53 and new section 1186.6 filed 3–6–2001; operative 4–5–2001. Submitted to OAL for printing only pursuant to Government Code section 17527(g) (Register 2001, No. 10).

§ 1186.61. Review of Completed Application for a Finding of Significant Financial Distress and Preparation of Staff Analysis.

(a) Before the hearing is conducted in the applicant county, the executive director shall prepare and distribute a staff analysis of the application, which shall include, but not be limited to, a review of written responses, opposition, recommendations and comments filed by interested persons, and rebuttals filed by the applicant. The staff analysis may also include a review of the applicant's revenue sources, including the applicant's flexibility in directing its resources; review of the applicant's budget expenditures, statutory relief, contingencies and fund balances, an analysis of the applicant's department–by–department evaluation of unmet need in basic county services; and a preliminary recommendation whether the commission should approve or deny the application. The staff analysis shall describe the application and assist the commission in determining whether or not to make a finding of significant financial distress.

(b) The executive director shall send the staff analysis out for comment at least ten (10) days prior to the hearing conducted in the applicant county.

NOTE: Authority cited: Section 17527(g), Government Code; and Section 17000.6, Welfare and Institutions Code. Reference: Section 17000.6, Welfare and Institutions Code.

HISTORY

1. New section filed 12–16–93 as an emergency; operative 1–1–94. Submitted to OAL for printing only pursuant to Government Code section 17527(g) (Register 93, No. 51). A Certificate of Compliance must be transmitted to OAL by 5–1–94 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 4–26–94 as an emergency; operative 4–26–94 (Register 94, No. 17). Submitted to OAL for printing only. A Certificate of Compliance must be transmitted to OAL by 8–24–94 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 4–26–94 order transmitted to OAL 6–10–94 and filed 7–14–94 (Register 94, No. 28).
4. Renumbering of former section 1186.61 to section 1186.54 and new section 1186.61 filed 3–6–2001; operative 4–5–2001. Submitted to OAL for printing only pursuant to Government Code section 17527(g) (Register 2001, No. 10).

§ 1186.62. Written Comments.

The applicant and any interest persons may file written comments concerning the staff analysis with the commission. Written comments shall be filed with the commission and simultaneously served upon the applicant and any interest persons included on the mailing list under the timeline established by the executive director. The written comments shall be reviewed by the executive director and may be incorporated into any revised or supplemental staff analysis of the application.

NOTE: Authority cited: Section 17527(g), Government Code; and Section 17000.6, Welfare and Institutions Code. Reference: Section 17000.6, Welfare and Institutions Code.

HISTORY

1. New section filed 12–16–93 as an emergency; operative 1–1–94. Submitted to OAL for printing only pursuant to Government Code section 17527(g) (Register 93, No. 51). A Certificate of Compliance must be transmitted to OAL by 5–1–94 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 4–26–94 as an emergency; operative 4–26–94 (Register 94, No. 17). Submitted to OAL for printing only. A Certificate of Compliance must be transmitted to OAL by 8–24–94 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 4–26–94 order transmitted to OAL 6–10–94 and filed 7–14–94 (Register 94, No. 28).
4. Amendment of subsection (a), including repeal of subsection (a) designator, and repealer of subsection (b) filed 1–26–99; operative 1–26–99. Submitted to OAL for printing only (Register 99, No. 5).
5. Renumbering of former section 1186.62 to section 1186.55 and new section 1186.62 filed 3–6–2001; operative 4–5–2001. Submitted to OAL for printing only pursuant to Government Code section 17527(g) (Register 2001, No. 10).

§ 1186.63. Conduct of Hearing.

(a) Each party shall have the right to present witnesses, to introduce exhibits, and to propose questions to the chairperson, hearing panel, or hearing officer for opposing witnesses in support or rebuttal of any matter relevant to the issues even though that matter was not covered in the direct examination.

(b) The hearings will not be conducted according to technical rules relating to evidence and witnesses. Any relevant non–repetitive evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs. Irrelevant and unduly repetitious evidence shall be excluded. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions.

(c) The commission, hearing panel, or hearing officer may question any party or witness, may admit any relevant and material evidence, and may limit the length of testimony to a specific amount of time for any party or witness.

(d) The taking of evidence and testimony in a hearing shall be controlled by the commission, hearing panel, or hearing officer in the manner best suited to ascertain the facts.

(e) The commission, hearing panel, or hearing officer may require any person to testify under oath or affirmation.

(f) Public hearings, pursuant to this article, shall be recorded by stenographic reporter or electronic recording or both. The transcript or recordings shall be kept for the period of time required by applicable law governing the retention of records of state agency public proceedings, or until conclusion of administrative or judicial proceedings, whichever is later.

(g) The commission hearing will be conducted pursuant to the provisions of article 6.5.

NOTE: Authority cited: Section 17527(g), Government Code; and Section 17000.6, Welfare and Institutions Code. Reference: Section 17000.6, Welfare and Institutions Code.

HISTORY

1. New section filed 12–16–93 as an emergency; operative 1–1–94. Submitted to OAL for printing only pursuant to Government Code section 17527(g) (Register 93, No. 51). A Certificate of Compliance must be transmitted to OAL by

5–1–94 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 4–26–94 as an emergency; operative 4–26–94 (Register 94, No. 17). Submitted to OAL for printing only. A Certificate of Compliance must be transmitted to OAL by 8–24–94 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 4–26–94 order transmitted to OAL 6–10–94 and filed 7–14–94 (Register 94, No. 28).

§ 1186.64. Representation at Hearing.

(a) The board of supervisors of a county shall designate a county representative.

(b) The county representative shall be the lead spokesperson and shall present all matters respecting the interest of the county in the proceeding.

(c) Withdrawal of appearance of any representative may be effected by filing a written notice of withdrawal and by serving a copy on the commission.

NOTE: Authority cited: Section 17527(g), Government Code; and Section 17000.6, Welfare and Institutions Code. Reference: Section 17000.6, Welfare and Institutions Code.

HISTORY

1. New section filed 12–16–93 as an emergency; operative 1–1–94. Submitted to OAL for printing only pursuant to Government Code section 17527(g) (Register 93, No. 51). A Certificate of Compliance must be transmitted to OAL by 5–1–94 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 4–26–94 as an emergency; operative 4–26–94 (Register 94, No. 17). Submitted to OAL for printing only. A Certificate of Compliance must be transmitted to OAL by 8–24–94 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 4–26–94 order transmitted to OAL 6–10–94 and filed 7–14–94 (Register 94, No. 28).

§ 1186.65. Continuance of Hearings and Further Hearings.

(a) The commission, hearing panel, or hearing officer may continue a hearing to another time or place.

(b) Due to the strict time frames contained in subdivision (c) of Welfare and Institutions Code section 17000.6, continuances will be granted only under compelling and urgent circumstances.

NOTE: Authority cited: Section 17527(g), Government Code; and Section 17000.6, Welfare and Institutions Code. Reference: Section 17000.6, Welfare and Institutions Code.

HISTORY

1. New section filed 12–16–93 as an emergency; operative 1–1–94. Submitted to OAL for printing only pursuant to Government Code section 17527(g) (Register 93, No. 51). A Certificate of Compliance must be transmitted to OAL by 5–1–94 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 4–26–94 as an emergency; operative 4–26–94 (Register 94, No. 17). Submitted to OAL for printing only. A Certificate of Compliance must be transmitted to OAL by 8–24–94 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 4–26–94 order transmitted to OAL 6–10–94 and filed 7–14–94 (Register 94, No. 28).

§ 1186.7. Preliminary and Final Decisions; Action on Decisions.

(a) Within 60 days after receipt of an application, the executive director shall notify the county of the commission, hearing panel, or hearing officer's preliminary decision that the county did or did not make a compelling case that it will incur significant financial distress pursuant to Welfare and Institutions Code section 17000.6. If the time period is extended pursuant to Section 1186.52 of these regulations, notice of the preliminary decision shall be provided within 120 days after receipt of an application, or as otherwise provided by the current Budget Act.

(b) If an application is heard by a hearing panel, the panel shall direct staff to prepare the preliminary decision in such form that it may be adopted as the final decision by the commission. When an application is heard by a hearing officer, a preliminary decision shall be presented in such form that it may be adopted by the commission as its final decision on the application. When an application is heard before the commission itself the commission shall direct staff to prepare a final decision in accord with the commission's vote, which will be presented to the commission for adoption as its final decision.

(c) Within 90 days after receipt of an application, the executive director shall give notice to the county of the commission's final decision that the county did or did not make a compelling case that it will incur significant financial distress pursuant to Welfare and Institutions Code section 17000.6. If the time period is extended pursuant to Section 1186.52 of these regulations, notice of the final decision shall be provided within 150 days after receipt of an application, or as otherwise provided by the current Budget Act.

(d) If the preliminary decision prepared by the hearing panel or hearing officer is not adopted by the commission as its final decision, the commission may direct appropriate modification of the preliminary decision and thereafter adopt it as the commission final decision or decide the application upon the record, with or without taking additional evidence, or may refer the application to a hearing panel or hearing officer to take additional evidence. If the application is so assigned to a hearing panel or hearing officer, the hearing panel or hearing officer shall prepare a preliminary decision, as provided in subdivision (b), which shall be based upon the additional evidence and the transcript and other papers which are a part of the record of the prior hearing.

(e) The affirmative vote of at least a majority of the existing membership of the commission is required for the adoption of a final decision by the commission. A copy of the final decision shall be filed by the commission as a public record.

(f) A commission final decision which makes a finding of significant financial distress will be effective for a period not to exceed 36 months. The final decision shall specify whether the effective date of the period of significant financial distress shall commence on the date of the final decision or on a date no more than 60 days from the date of the final decision.

NOTE: Authority cited: Stats. 1998, c. 324, Prov. (2), p. 622 (and subsequent Budget Acts); Section 17527(g), Government Code; and Section 17000.6, Welfare and Institutions Code. Reference: Sections 17527(c) and 17532, Government Code; and Section 17000.6, Welfare and Institutions Code.

HISTORY

1. New section filed 12–16–93 as an emergency; operative 1–1–94. Submitted to OAL for printing only pursuant to Government Code section 17527(g) (Register 93, No. 51). A Certificate of Compliance must be transmitted to OAL by 5–1–94 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 4–26–94 as an emergency; operative 4–26–94 (Register 94, No. 17). Submitted to OAL for printing only. A Certificate of Compliance must be transmitted to OAL by 8–24–94 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 4–26–94 order transmitted to OAL 6–10–94 and filed 7–14–94 (Register 94, No. 28).
4. Amendment of section heading, section and NOTE filed 1–26–99; operative 1–26–99. Submitted to OAL for printing only (Register 99, No. 5).

§ 1186.71. Form of Decision.

The final decision shall be based on the record, shall be in writing, and shall include a statement of reasons for the decision, findings, and conclusions. A copy of the final decision shall be mailed to or served on the applicant county.

NOTE: Authority cited: Section 17527(g), Government Code; and Section 17000.6, Welfare and Institutions Code. Reference: Section 17000.6, Welfare and Institutions Code.

HISTORY

1. New section filed 12–16–93 as an emergency; operative 1–1–94. Submitted to OAL for printing only pursuant to Government Code section 17527(g) (Register 93, No. 51). A Certificate of Compliance must be transmitted to OAL by 5–1–94 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 4–26–94 as an emergency; operative 4–26–94 (Register 94, No. 17). Submitted to OAL for printing only. A Certificate of Compliance must be transmitted to OAL by 8–24–94 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 4–26–94 order transmitted to OAL 6–10–94 and filed 7–14–94 (Register 94, No. 28).

§ 1186.72. Reapplications.

(a) A county may file a reapplication for a finding of significant financial distress with the commission.

(b) The application and hearing procedures prescribed in Article 6.5 of these regulations shall also apply to reapplications. The applicant shall also provide the following information in its reapplication:

(1) How the applicant utilized the savings in reduction of the General Assistance Standard of Aid realized from the preceding finding of significant financial distress.

(2) The difference in the county's total population between the date the preceding application was filed and the date the reapplication is filed.

(3) Any staff changes, changes to working conditions, including but not limited to reduced work hours or salary increases or decreases that occurred since the date the preceding application was filed.

(4) Any statutes enacted since the date the preceding application was filed that change county revenue sources or expenditures, or impose new mandates upon the county.

(5) Tables that include the difference between proposed and approved unmet need in the preceding application, and the proposed unmet need in the reapplication. Tables may also be submitted by a predetermined computer medium.

(c) A county filing a reapplication of a previously approved finding of significant financial distress must present a compelling case of significant financial distress continuing since the last approved finding by the commission.

(d) For a previously denied application, a county may file a reapplication when the fiscal situation in the county has changed.

NOTE: Authority cited: Section 17527(g), Government Code; and Section 17000.6, Welfare and Institutions Code. Reference: Section 17000.6, Welfare and Institutions Code.

HISTORY

1. New section filed 12–16–93 as an emergency; operative 1–1–94. Submitted to OAL for printing only pursuant to Government Code section 17527(g) (Register 93, No. 51). A Certificate of Compliance must be transmitted to OAL by 5–1–94 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 4–26–94 as an emergency; operative 4–26–94 (Register 94, No. 17). Submitted to OAL for printing only. A Certificate of Compliance must be transmitted to OAL by 8–24–94 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 4–26–94 order transmitted to OAL 6–10–94 and filed 7–14–94 (Register 94, No. 28).
4. Repealer and new subsection (b), new subsection (c) and subsection relettering filed 1–26–99; operative 1–26–99. Submitted to OAL for printing only (Register 99, No. 5).
5. Amendment of subsection (b), new subsections (b)(1)–(5) and amendment of subsection (c) filed 3–6–2001; operative 4–5–2001. Submitted to OAL for printing only pursuant to Government Code section 17527(g) (Register 2001, No. 10).

§ 1186.73. Withdrawal of Applications.

An application may be withdrawn by written notice any time before a final decision is issued or upon request at the time of hearing. When the commission receives such notice or request to withdraw, the commission may issue a decision dismissing the application.

NOTE: Authority cited: Section 17527(g), Government Code; and Section 17000.6, Welfare and Institutions Code. Reference: Section 17000.6, Welfare and Institutions Code.

HISTORY

1. New section filed 12–16–93 as an emergency; operative 1–1–94. Submitted to OAL for printing only pursuant to Government Code section 17527(g) (Register 93, No. 51). A Certificate of Compliance must be transmitted to OAL by 5–1–94 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 4–26–94 as an emergency; operative 4–26–94 (Register 94, No. 17). Submitted to OAL for printing only. A Certificate of Compliance must be transmitted to OAL by 8–24–94 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 4–26–94 order transmitted to OAL 6–10–94 and filed 7–14–94 (Register 94, No. 28).
4. Amendment filed 1–26–99; operative 1–26–99. Submitted to OAL for printing only (Register 99, No. 5).

Article 7. Hearings and Decisions

§ 1187. Scheduling and Noticing the Hearing on a Test Claim.

A test claim shall be set for hearing when commission staff issues its draft staff analysis. A written notice of the date, time, and place of hearing shall be mailed to:

(1) The address of the local agency or school district submitting the claim.

(2) Any representative designated by the local agency or school district.

(3) The Department of Finance, the Office of the State Controller, and any other affected state agency.

(4) Any interested person requesting such notice in writing.

NOTE: Authority cited: Section 17527(g) and 17553(a), Government Code. Reference: Sections 17551, 17553(a) and 17557(e), Government Code.

HISTORY

1. Amendment filed 12–13–85; effective upon filing pursuant to Government Code Section 11346.2(d) (Register 85, No. 50).
2. Editorial correction of NOTE (Register 86, No. 2).
3. Repealer and new section heading, section and NOTE filed 7–23–96; operative 7–23–96. Submitted to OAL for printing only (Register 96, No. 30).
4. Amendment of subsection (b) filed 9–13–99; operative 9–13–99. Submitted to OAL for printing only pursuant to Government Code section 17527 (Register 99, No. 38).
5. Amendment of section heading, section and NOTE filed 9–6–2005; operative 9–6–2005. Exempt from OAL review and submitted to OAL for printing only pursuant to Government Code section 17527(g) (Register 2005, No. 36).

§ 1187.1. Notice of Hearing.

NOTE: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections 17553(a) and 17555, Government Code.

HISTORY

1. Amendment of subsections (a) and (b)(3), repealer of subsections (d)–(f) and repealer and new NOTE filed 7–23–96; operative 7–23–96. Submitted to OAL for printing only (Register 96, No. 30).
2. Repealer filed 9–6–2005; operative 9–6–2005. Exempt from OAL review and submitted to OAL for printing only pursuant to Government Code section 17527(g) (Register 2005, No. 36).

§ 1187.2. Assignment to Hearing Panels/Hearing Officers.

(a) The commission's chairperson may assign claims before the commission to a hearing panel consisting of one or more members or to a hearing officer for hearing and preparation of a proposed decision in such form that it may be adopted as the decision in the case. With the exception of an assignment of a claim to a hearing panel in the case of a tie vote as provided in Section 1182, subdivision (c), assignments by the commission chairperson of members on such hearing panels shall be rotated among the members with the composition of the members so assigned being varied and changed to assure that there shall never be a fixed and continued composition of members. The commission shall hold at least one (1) informational hearing in accordance with Article 8 of these regulations before the assignment of any claim to a hearing panel or hearing officer. The claimant and the parties shall receive notice before the informational hearing regarding the assignment of any claim to a hearing panel or hearing officer.

(b) A claim shall be heard and decided by the commission itself at the request of any two (2) members of the commission.

NOTE: Authority cited: Sections 17527(c) and (g) and 17532, Government Code. Reference: Section 17532, Government Code.

HISTORY

1. Amendment of subsection (a) and NOTE filed 9–13–99; operative 9–13–99. Submitted to OAL for printing only pursuant to Government Code section 17527 (Register 99, No. 38).
2. Amendment of subsection (a) filed 1–27–2000; operative 1–27–2000. Submitted to OAL for printing only (Register 2000, No. 4).
3. Amendment filed 9–6–2005; operative 9–6–2005. Exempt from OAL review and submitted to OAL for printing only pursuant to Government Code section 17527(g) (Register 2005, No. 36).

§ 1187.3. Objection to Hearing Panel, Hearing Officer, or Commission Member.

(a) Any party may ask that a claim be heard by the commission itself rather than by a hearing panel or hearing officer.

(b) Any party may request the disqualification of any hearing officer or commission member before the taking of evidence at a hearing by filing an affidavit stating with particularity the grounds upon which it is claimed that a fair and impartial hearing cannot be accorded. Where the request concerns a commission member, the issue shall be determined by the other members of the commission. Where the request concerns the hearing officer, the issue shall be determined by the commission itself, if the commission itself hears the case with the hearing officer; otherwise the issue shall be determined by the hearing officer.

NOTE: Authority cited: Sections 17527(c) and (g) and 17532, Government Code. Reference: Section 17527, Government Code.

HISTORY

1. Amendment of subsection (a) filed 9–13–99; operative 9–13–99. Submitted to OAL for printing only pursuant to Government Code section 17527 (Register 99, No. 38).
2. Amendment of section heading and subsection (b) filed 9–6–2005; operative 9–6–2005. Exempt from OAL review and submitted to OAL for printing only pursuant to Government Code section 17527(g) (Register 2005, No. 36).

§ 1187.4. Pre–Hearing Conference.

(a) A pre–hearing conference may be scheduled by the commission or the executive director for the purpose of identifying issues and determining methods of resolving such issues. The claimant(s), Department of Finance, Office of the State Controller, affected state agencies, and other interested parties to a claim shall be invited to participate. This conference shall not limit the issues that can be presented to or considered by the commission at a public hearing.

(b) Parties and interested parties shall receive notice of any prehearing conference convened under this Section at least ten (10) days before the conference. The notice shall be served on the parties to the claim by mail, facsimile transmission, e–mail, or by other electronic media. With the agreement of the parties, the prehearing conference may be a teleconference.

(c) Anything said, any document disclosed, and any new assertions and representations of fact made during a prehearing conference shall not be made part of the administrative record of a claim unless properly admitted into the record through the submission of an amendment to a test claim, a written response, opposition, recommendations, comments, rebuttal, and/or public testimony.

NOTE: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections 17527(c), 17530, 17532, 17551, 17553(a), Government Code.

HISTORY

1. Amendment of section and repealer and new NOTE filed 7–23–96; operative 7–23–96. Submitted to OAL for printing only (Register 96, No. 30).
2. New subsection (c) filed 9–13–99; operative 9–13–99. Submitted to OAL for printing only pursuant to Government Code section 17527 (Register 99, No. 38).
3. Amendment filed 9–6–2005; operative 9–6–2005. Exempt from OAL review and submitted to OAL for printing only pursuant to Government Code section 17527(g) (Register 2005, No. 36).

§ 1187.5. Evidence Submitted to the Commission.

(a) The hearings will not be conducted according to technical rules relating to evidence and witnesses. Any relevant non–repetitive evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs. Irrelevant and unduly repetitious evidence shall be excluded. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions.

(b) Oral or written testimony offered by any person shall be under oath or affirmation.

(c) Official notice may be taken in the manner and of such information as is described in Government Code Section 11515.

(d) Each party shall have the right to present witnesses, introduce exhibits, and propose questions to the chairperson for opposing witnesses. Evidence may be submitted to support or rebut any issue. If declarations are to be used in lieu of testimony, the party proposing to use the declaration shall comply with Government Code Section 11514.

NOTE: Authority and reference cited: Sections 17527(e), 17553, 17557, 17610, 17621 and 17622, Government Code.

§ 1187.6. Conduct of Hearing.

(a) Each party shall have the right to present witnesses, to introduce exhibits, and to propose questions to the chairperson for opposing witnesses in support or rebuttal of any matter relevant to the issues even though that matter was not covered in the direct examination.

(b) The presiding member, commission members, hearing panel member or hearing officer may question any party or witness and may admit any relevant and material evidence.

(c) The taking of evidence in a hearing shall be controlled by the commission or hearing officer in the manner best suited to ascertain the facts and safeguard the rights of the parties. Prior to taking evidence, the issues and the order of presenting evidence will be explained.

(d) The hearing will ordinarily proceed in the following manner. Staff of the commission will summarize the undisputed facts and the issues. The claimant will state its position and present its evidence. The Department of Finance and/or other affected state agency will thereafter state its position and present its evidence. The claimant will then be given an opportunity to reply.

(e) The commission or hearing officer may call a party, or any other person who is present, to testify under oath or affirmation. Any member of the commission, its executive director, or hearing officer may question witnesses.

(f) The commission or the executive director may require that prepared written testimony or other evidence be submitted in advance of any hearing, for the purpose of facilitating the orderly consideration of issues at the hearing.

(1) Written testimony received at least 15 days in advance of the hearing shall be included in the commission's meeting binders.

(2) Written testimony received less than 15 days in advance of the hearing shall be included in the commission's meeting binders, if possible, or shall be provided to the commission when the item is heard, unless otherwise agreed to by the commission or the executive director.

(3) Written testimony received on the day of the hearing, before the item is taken up by the commission, shall be provided to the commission when the item is called, unless otherwise agreed to by the commission or the executive director.

(g) Commission public hearings shall be recorded by stenographic reporter or electronic recording or both. The transcript or recordings shall be kept for the period of time required by applicable law governing the retention of records of state agency public proceedings, or until conclusion of administrative or judicial proceedings, whichever is later.

NOTE: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections 17527(c), 17532, 17551, 17553(a), and 17555, Government Code.

HISTORY

1. New subsections (f)–(f)(3) and subsection relettering and repealer and new NOTE filed 7–23–96; operative 7–23–96. Submitted to OAL for printing only (Register 96, No. 30).

§ 1187.7. Witnesses and Subpoenas.

(a) A party shall arrange for the presence of its own witnesses at a hearing on a claim.

(b) A subpoena may be issued upon a majority vote of the commission. A party requesting a subpoena shall submit a written application to the commission at least six weeks prior to the commission meeting at which the request will be considered.

(c) An application for a subpoena to compel the attendance of a witness shall be made by affidavit and shall give the name and address of the person to be subpoenaed, shall describe the matters to be testified on, shall set forth in detail the relevance to the issues involved in the claim, shall specify the date, time and place of the hearing on the claim and that, to the best of the applicant's personal knowledge or information or belief, the person to be subpoenaed has knowledge of such matters. If the appli-

cant is unable to obtain the name of the person who has knowledge of such matters, the name of the director of the state or local agency or superintendent of a school district may be used for the application.

(d) An application for subpoena duces tecum for the production by a witness of books, papers, correspondence, memoranda, or other records, including records of the claimant, shall be made by affidavit and shall give the name and address of the person to be subpoenaed, shall describe the matters or things desired to be produced, shall set forth in detail the relevance to the issues involved in the claim, shall specify the date on which such matters shall be produced, and that, to the best of the applicant's personal knowledge or information or belief, the witness has such matters or things in his or her possession or under his or her control and that none of the matters or things desired to be produced are public records accessible to the public pursuant to Section 6250 and following, of the Government Code. If the applicant is unable to obtain the name of the person who has possession or control of such matters or things desired to be produced, the name of the director or superintendent or custodian of records of the state or local agency or school district may be used for the application.

(e) When a request for subpoena or subpoena duces tecum is approved by the commission, the subpoena or subpoena duces tecum shall be issued signed by the executive director, but otherwise in blank.

(f) Before service, all appropriate portions of the blank subpoena or subpoena duces tecum shall be completed by the requesting party, and the name, address, and telephone number of the requesting party shall be included on the form. Service of subpoenas and subpoenas duces tecum shall be made with a copy of the affidavit and shall be arranged for by requesting parties.

(g) Except as otherwise provided in this section, service of subpoenas or subpoenas duces tecum shall be in accordance with the provisions of Section 1985 and following of the Code of Civil Procedure.

NOTE: Authority cited: Section 17527(g), Government Code. Reference: Sections 17527(d), 17551, 17553(a), Government Code.

HISTORY

1. Amendment of section and NOTE filed 7–23–96; operative 7–23–96. Submitted to OAL for printing only (Register 96, No. 30).

§ 1187.8. Representation at Hearing.

(a) A party may appear in person or through a representative.

(b) A representative of a party shall be deemed to control all matters respecting the interest of such party in the proceeding.

(c) Withdrawal of appearance of any representative may be effected by filing a written notice of withdrawal and by serving a copy on all parties.

NOTE: Authority and reference cited: Sections 17527(c), 17551, 17553, 17555, 17620, 17621 and 17622, Government Code.

§ 1187.9. Continuance of Hearings and Further Hearings.

(a) The commission may continue a hearing to another time or place on its own motion or, upon a clear showing of good cause, at the request of any party. Written notice of the time and place of the continued hearing, except as provided herein, shall be in accordance with Section 1187.1 of these regulations. When a continuance is ordered during a hearing, oral notice of the time and place of the continued hearing may be given to each party present at the hearing.

Prior to the adoption of its written decision on the matter being heard, the commission on its own motion, or upon a showing of good cause, may order a further hearing. Notice of the next hearing on the matter shall be given in accordance with Section 1187.1 of these regulations.

(b) In determining whether there is good cause for a continuance within the meaning of subdivision (1) the following policy should be taken into consideration: Continuances are not favored by the commission. The parties are expected to submit for decision all matters in controversy at a single hearing and to produce at such hearing all necessary evidence, including witnesses, documents and all other matters considered essential in the proof of a party's allegations. Continuances will be granted only upon a clear showing of good cause.

NOTE: Authority and reference cited: Section 17553, Government Code.

§ 1188. Oral and Written Arguments.

At the request of any party made prior to the close of the hearing, the commission shall grant oral argument. If written argument is requested, it may be granted and the parties will be advised as to the time and manner within which their briefs are to be filed.

NOTE: Authority and reference cited: Section 17553, Government Code.

§ 1188.1. Decision; Action on Proposed Decision.

(a) If a proceeding is heard before the commission itself, or a panel of the commission, and a hearing officer presided, the hearing officer who presided at the hearing shall be present during consideration of the claim and, if requested, shall assist and advise the commission in preparation of the proposed decision.

(b) If a proceeding is heard before the commission itself, the executive director may prepare and present the proposed statement of decision to the commission and interested parties before the hearing. The commission may adopt the proposed statement of decision on the same day as the hearing if there is no objection from the claimant or interested parties.

(c) If a proceeding is heard by a hearing panel or a hearing officer alone, the panel or hearing officer shall prepare a proposed decision in such form that it may be adopted as the decision in the proceeding. When a proceeding is heard before the commission itself, without a hearing officer, the commission shall direct commission staff to prepare a proposed decision in accord with the commission's vote, which will be presented to the commission for adoption as its decision.

(d) A copy of the proposed decision shall be filed by commission staff as a public record and a copy of the proposed decision shall be served by commission staff on each party. The commission itself may adopt the proposed decision or decide the case itself as provided in subdivision (e) below.

(e) If the proposed decision of the hearing officer or hearing panel is not adopted by the commission, the commission itself may decide the case upon the record, including the transcript, with or without taking additional evidence or may refer the case to the same hearing panel or hearing officer to take additional evidence. If the case is so assigned to a hearing panel or hearing officer, the hearing panel or hearing officer shall prepare a proposed decision as provided in subdivision (c) upon the additional evidence and the transcript and other papers which are a part of the record of the prior hearing. A copy of such proposed decision shall be furnished to each party as prescribed in subdivision (d).

The commission itself shall decide no cases provided for in this subdivision without affording the parties the opportunity to present either oral or written argument before the commission.

(f) If the proposed decision of commission staff is not adopted by the commission, as provided in subsections (b) or (c), the commission shall direct appropriate modification of the proposed decision and thereafter adopt it as the commission's decision.

(g) Except as provided for in subsection (b), the proposed decision shall be prepared within a reasonable time following submission of the case to the hearing officer or panel or commission vote, and within a reasonable time after the evidentiary hearing. It shall be served on the parties promptly thereafter. The sole issue is whether the proposed decision accurately reflects the vote of the Commission.

NOTE: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections 17551 and 17553(a), Government Code.

HISTORY

1. New subsection (b), subsection relettering, and amendment of newly designated subsections (d)–(f) and NOTE filed 7–23–96; operative 7–23–96. Submitted to OAL for printing only (Register 96, No. 30).
2. Amendment of subsections (b) and (g) and amendment of NOTE filed 9–13–99; operative 9–13–99. Submitted to OAL for printing only pursuant to Government Code section 17527 (Register 99, No. 38).
3. Amendment of section and NOTE filed 9–6–2005; operative 9–6–2005. Exempt from OAL review and submitted to OAL for printing only pursuant to Government Code section 17527(g) (Register 2005, No. 36).

§ 1188.2. Form of Decision.

(a) Any decision made pursuant to evidence introduced at an adjudicatory hearing shall be in writing, be based on the record, and shall include a statement of reasons for the decision, findings and conclusions. A copy

of the decision shall be mailed to or served on each party or his representative.

(b) After a decision or proposed decision has been mailed or served it shall not be changed except to correct clerical errors, in which case a corrected decision or proposed decision shall be prepared and mailed or served.

NOTE: Authority and reference cited: Sections 17532, 17551, 17555, 17620 and 17622, Government Code.

§ 1188.3. Withdrawal of Claims and Requests.

A claim, or any portion of a claim, may be withdrawn by written application any time before a decision is adopted, or by oral application at the time of hearing. If such application is made, the commission may issue a decision dismissing the claim. If the withdrawal is of a test claim, or portion thereof, the procedures described in Section 1183.08 must be followed before dismissal, except as provided in Government Code section 17574.

NOTE: Authority cited: Sections 17553, 17573, 17574 and 17621, Government Code. Reference: Sections 17553, 17573, 17574 and 17621, Government Code.

HISTORY

1. Amendment filed 9-6-2005; operative 9-6-2005. Exempt from OAL review and submitted to OAL for printing only pursuant to Government Code section 17527(g) (Register 2005, No. 36).
2. Amendment of section and NOTE filed 4-24-2008; operative 4-24-2008 pursuant to Government Code section 11343.4. Submitted to OAL for printing only (Register 2008, No. 17).

§ 1188.31. Dismissal of Actions.

(a) Any action, other than a test claim, subject to a hearing under Article 7, which has been postponed or placed on inactive status by the claimant or requesting party for a period of more than one year, may be dismissed by the commission on its own motion or by a motion of any party after notice and an opportunity to be heard has been made to the claimant, parties, and interested parties.

(b) The hearing on a dismissal of an action shall be conducted in accordance with Article 7 of these regulations.

(c) Notice of a hearing to dismiss an action shall be made within 60 days of the date scheduled for hearing. A copy of the notice shall also be posted electronically. The commission shall notify the claimant, parties, and interested parties that they shall have the opportunity to provide written comments on the motion to dismiss within 45 days of receipt of the notice of the hearing. The claimant, parties, and interested parties shall submit an original and two (2) copies of their written comments to the commission and a copy shall be simultaneously served to all other parties and interested parties who are on the mailing list described in Section 1181.2 of these regulations.

(d) Delays or postponements under the following circumstances will not be considered for purposes of computing whether an action has been postponed or placed on inactive status by the claimant for more than one year:

1. Delays or postponements made at the request of the commission or other state agency or department;

2. Delays or postponements, made at the request of the claimant or requesting party, pending the resolution of a matter currently before the commission of an issue similar to or related to the postponed action; and

3. Delays or postponements, made at the request of the claimant or requesting party, pending the resolution of litigation of an issue similar to or related to the postponed action.

(e) The provisions of this regulation shall only apply to claims or requests filed on or after the operative date of this regulation.

NOTE: Authority cited: Sections 17527(c) and (g) and 17532, Government Code. Reference: Sections 17525, 17527(c) and 17532, Government Code.

HISTORY

1. New section filed 4-5-2001; operative 5-5-2001. Submitted to OAL for printing only pursuant to Government Code section 17527 (Register 2001, No. 14).

§ 1188.4. Reconsideration of a Prior Final Decision.

(a) Notwithstanding Section 1188.2(b) of these regulations, the commission may make substantive changes to a prior final decision under this Section or order a reconsideration of all or part of a test claim or incorrect reduction claim on petition of any party. The power to order a reconsideration or amend a test claim decision shall expire thirty (30) days after the statement of decision is delivered or mailed to the claimant. If additional time is needed to evaluate a petition for reconsideration filed before the expiration of the thirty (30)-day period, the commission may grant a stay of that expiration for no more than thirty (30) days, solely for the purpose of considering the petition. A request for reconsideration shall be deemed automatically stayed for the thirty (30)-day period. If no action is taken on a petition within the time allowed for ordering reconsideration, the petition shall be deemed denied.

(b) Except as provided elsewhere in this Section, any interested party, affected state agency, or commission member may request that the commission reconsider or amend a test claim decision and change a prior final decision to correct an error of law.

(c) All requests for reconsideration shall be submitted to the commission, in writing, and shall contain the following:

(1) The name and address of the requesting party;

(2) A copy of the commission's prior final decision;

(3) A detailed statement of the reasons for the request, including:

(A) An explanation of the reasons for the request for reconsideration; and,

(B) All documentation the requestor intends to submit to support the request;

(4) A description of the proposed change to be made in the prior final decision; and,

(5) A statement that the request for reconsideration and all attachments, if any, have been sent to the original claimant, interested parties, and affected state agencies, including their names and addresses.

(d) Commission member requests may be made orally during a regularly scheduled commission meeting. Commission staff shall prepare such written request, as specified in subsection (c)(1-5) above.

(e) Any signatory to a written agreement that settles a claim may not request reconsideration of that claim if the claim is settled with prejudice.

(f) Before the commission considers the request for reconsideration, commission staff shall prepare a written analysis and recommend whether the request for reconsideration should be granted. The commission shall consider the request for reconsideration at a scheduled meeting. Five (5) affirmative votes shall be required to grant the request for reconsideration.

(g) If the commission grants the request for reconsideration, a hearing shall be conducted to determine if the prior final decision is contrary to law and to correct an error of law.

(1) The following procedures shall govern the commission's review of the prior final decision:

(A) Before the commission considers whether a prior final decision is contrary to law, commission staff shall prepare a written analysis regarding whether the prior final decision is contrary to law which shall include but not be limited to a review of the written responses, opposition, recommendations, and comments filed by other state agencies, interested parties, and the requestor. Commission staff analysis shall describe the request for reconsideration and assist the commission in determining whether the prior final decision is contrary to law.

(B) At least eight (8) weeks before the commission is scheduled to consider whether a prior final decision is contrary to law, or at such other time as required by the executive director, commission staff shall prepare a draft staff analysis and distribute it to the requestor, interested parties, affected state agencies, and any person who requests a copy.

(C) The requestor, interested parties, or affected state agencies may file written comments with commission staff concerning the draft staff analysis. Written comments shall be simultaneously served upon the requestor, interested parties, and affected state agencies on the mailing list by the date determined and publicized by the executive director. A three (3) week period for comments shall be given, subject to the executive director's authority to expedite all matters pursuant to Government Code section 17530. All written comments timely filed shall be reviewed by commission staff and may be incorporated into the written analysis re-

garding whether the prior final decision is contrary to law and presented to the commission before the scheduled meeting.

(2) The procedures set forth in Article 7 shall govern the commission's hearings and decisions process, except that five (5) affirmative votes shall be required to change a prior final decision.

(h) If the commission changes a prior final decision, the procedures set forth in Article 3, Sections 1183.1 through 1183.3, of these regulations shall govern the adoption of parameters and guidelines and the statewide cost estimate, if applicable.

(i) Failure to seek commission reconsideration of a prior final decision shall not affect a claimant's or state agency's right to seek judicial review pursuant to Government Code section 17559, subdivision (b).

(j) This Section only applies to reconsiderations requested pursuant to Government Code section 17759, subdivision (a); it does not apply to remands or reconsiderations directed by the courts or by statute.

NOTE: Authority cited: Sections 17500, 17527(c) and (g), 17553(a) and 17559(a), Government Code. Reference: Sections 17532, 17551 and 17559, Government Code.

HISTORY

1. New section filed 7–17–98; operative 7–17–98. Submitted to OAL for printing only (Register 98, No. 29).
2. Amendment of section and NOTE filed 2–2–2001; operative 3–4–2001. Submitted to OAL for printing only pursuant to Government Code section 17527 (Register 2001, No. 5).
3. Amendment filed 9–6–2005; operative 9–6–2005. Exempt from OAL review and submitted to OAL for printing only pursuant to Government Code section 17527(g) (Register 2005, No. 36).

§ 1188.5. Amendment of a Prior Final Decision.

NOTE: Authority cited: Sections 17500, 17527(c) and (g) and 17553(a), Government Code. Reference: Sections 17532, 17551 and 17559, Government Code.

HISTORY

1. New section filed 7–17–98; operative 7–17–98. Submitted to OAL for printing only (Register 98, No. 29).
2. Repealer filed 4–21–2003; operative 4–21–2003. Submitted to OAL for printing only pursuant to Government Code section 17527(g) (Register 2003, No. 17).

Article 8. Rulemaking and Informational Hearings

§ 1189. Commission Proceedings.

NOTE: Authority and reference cited: Sections 17527 and 17532, Government Code.

HISTORY

1. Repealer filed 7–23–96; operative 7–23–96. Submitted to OAL for printing only (Register 96, No. 30).

§ 1189.1. Petitions.

(a) Any person may petition the commission to request rulemaking hearings. Such petition shall include:

(1) the name, address, and telephone number of the petitioner;

(2) the substance or nature of the regulation, amendment, or repeal requested;

(3) the reasons for the request;

(4) reference to the authority of the commission to take the action requested.

(b) Such petition shall be filed with the executive director who shall within seven (7) days after its filing determine whether the petition contains the information specified in subsection (a).

(1) If the executive director determines that the petition is complete, it shall be certified in writing as complete and the petitioner shall be so notified.

(2) If the executive director determines that the petition is not complete, it shall be returned to the petitioner accompanied by a statement of its defects. The petitioner may correct the petition and resubmit it at any time.

(c) Upon certification by the executive director, the commission shall, within sixty (60) days from the filing of the petition, deny the petition, stating the reason for the denial in writing, or grant the petition, directing the staff to prepare an appropriate order pursuant to Section 1189.2 of these regulations.

NOTE: Authority and reference cited: Sections 11347, 11347.1 and 17527, Government Code.

HISTORY

1. Editorial correction of printing error of subsection (c) (Register 86, No. 12).

§ 1189.2. Commission Orders.

(a) The commission may, upon its own motion or upon granting a petition filed pursuant to Section 1189.1 of these regulations, adopt an order to institute a rulemaking proceeding in accordance with the procedures of Sections 1346.2, 11346.4, 11346.8 and 11346.9 of the Government Code.

(b) The commission may, upon its own motion, adopt an order to institute an informational proceeding. The order shall include:

(1) the date of the first hearing;

(2) a statement indicating whether the commission or a committee thereof will hold additional hearings on the matter;

(3) a statement of the authority pursuant to which the hearing is ordered, and a reference to any code sections or other provisions of law pursuant to which the information is to be gathered or disseminated;

(4) a statement of the nature and purpose of the proceedings;

(5) a statement requiring the presence and participation of such persons as the commission may direct, consistent with the nature and purpose of the proceedings.

(c) In addition to the requirements of subsections (a) and (b) of this section, every order instituting hearings pursuant to this section shall contain:

(1) a statement indicating the time during which written comments will be received and the manner by which such comments shall be filed;

(2) a statement that any person may make oral comments on the subject of the proceedings;

(3) a statement setting forth additional procedures deemed necessary by the commission and not inconsistent with these regulations.

NOTE: Authority cited: Section 17527(g), Government Code. Reference: Sections 11340.6, 11340.7, 17527(c) and (g) and 17551, Government Code.

HISTORY

1. Amendment of subsection (a) and NOTE filed 7–23–96; operative 7–23–96. Submitted to OAL for printing only (Register 96, No. 30).

§ 1189.3. Notice.

(a) Notice of a rulemaking proceeding shall be given in accordance with Government Code Section 11346.4.

(b) At least ten (10) days prior to the first hearing in an informational proceeding ordered pursuant to Section 1189.2 of these regulations, the executive director shall cause notice of the hearing to be mailed to every person requested to participate in such proceedings, and to any person who the executive director determines to be concerned with the subject matter of the proceeding.

(c) In addition to the requirements of subsections (a) and (b) of this section, notice of additional hearing shall be required at least ten (10) days prior to the commencement of such hearing unless continuation is orally announced in a public hearing.

(d) Nothing in this section shall preclude the commission from publishing notice in such additional forms or media as the executive director may prescribe.

(e) A copy of the order adopted pursuant to Section 1189.2 of these regulations shall accompany the initial notice prepared and mailed pursuant to this section, unless a copy of the order has been previously mailed to those persons who would receive such notice.

NOTE: Authority and reference cited: Sections 11346.4 and 17527, Government Code.

§ 1189.4. Use of Testimony.

The commission, or a committee thereof, may require by order instituting hearings, or by providing at least ten (10) days notice by mail or facsimile machine that evidence on specified issues of fact or matters of technical expertise be presented as sworn testimony. Such requirements shall not preclude unsworn oral or written comments from being offered in the proceeding.

NOTE: Authority cited: Section 17527(g), Government Code. Reference: Section 17527(e), 17551 and 17553(a), Government Code.

HISTORY

1. Amendment of section and NOTE filed 7–23–96; operative 7–23–96. Submitted to OAL for printing only (Register 96, No. 30).

§ 1189.5. Questioning.

Questions from commission members or staff are in order at any time. At the close of an oral statement, the presiding member may allow other persons to question a witness or person presenting a statement.

NOTE: Authority and reference cited: Sections 17527 and 17532, Government Code.

Article 8.5. Forms

§ 1189.6. Development and Approval of Commission Forms.

(a) In consultation with interested parties and in accordance with applicable law and these regulations, the executive director shall develop the test claim and other forms to simplify and improve the efficiency of the test claim process.

(b) The executive director may also develop additional forms to simplify and improve the efficiency of the incorrect reduction claims process.

(c) The executive director shall conduct at least one (1) workshop with interested parties, Department of Finance, Office of the State Controller, other affected state agencies, and interested persons before approval of a form.

(d) Upon development of a new form, the executive director shall notify claimants, interested parties, affected state agencies, and interested persons, and shall disseminate copies at least ten (10) days before a form's operative date.

(e) Any party may appeal to the commission for review of the actions and decisions of the executive director under this Section pursuant to Section 1181 of these regulations.

NOTE: Authority cited: Sections 17527(g) and 17553(a), Government Code. Reference: Sections 17530, 17553 and 17557(a), Government Code.

HISTORY

1. New article 8.5 (sections 1189.6–1189.61) and section filed 7–23–96; operative 7–23–96. Submitted to OAL for printing only (Register 96, No. 30).
2. Amendment of subsection (b) filed 9–13–99; operative 9–13–99. Submitted to OAL for printing only pursuant to Government Code section 17527 (Register 99, No. 38).
3. Amendment of section and NOTE filed 9–6–2005; operative 9–6–2005. Exempt from OAL review and submitted to OAL for printing only pursuant to Government Code section 17527(g) (Register 2005, No. 36).

§ 1189.61. Waiver of Forms Requirement.

The executive director may waive a requirement to use any form specified by these regulations if the form has not yet been approved and promulgated by the commission.

NOTE: Authority cited: Section 17527(g), Government Code. Reference: Section 17530, 17553 and 17557(a), Government Code.

HISTORY

1. New section filed 7–23–96; operative 7–23–96. Submitted to OAL for printing only (Register 96, No. 30).

Article 9. Conflict of Interest Code

§ 1189.10. General Provisions.

The Political Reform Act, Government Code sections 81000, et seq., requires state and local government agencies to adopt and promulgate conflict of interest codes. The Fair Political Practices Commission has adopted a regulation (Cal. Code of Regs., tit. 2, § 18730) which contains the terms of a standard conflict of interest code, which can be incorporated by reference, and which may be amended by the Fair Political Practices Commission to conform to amendments to the Political Reform Act after public notice and hearings. Therefore, the terms of California Code of Regulations, title 2, section 18730 and any amendments to it duly adopted by the Fair Political Practices Commission, along with the attached Appendix in which officials and employees are designated and disclosure categories are set forth, are hereby incorporated by reference and constitute the conflict of interest code of the commission.

Designated employees shall file statements of economic interests with their agency. Upon receipt of the statements of the commission members, their alternates and the executive director, the commission shall make and retain a copy and forward the originals to the Fair Political Practices Commission. Statements for all other designated employees shall be retained with the commission and made available for public inspection and reproduction. (Gov. Code, § 81008).

NOTE: Authority cited: Sections 87300, 87301, 87302, 87304 and 87306, Government Code. Reference: Sections 11146, 11146.3, 82019, 87206, 87207, 87300, 87301, 87302, 87304 and 87306, Government Code.

HISTORY

1. New article 9 (section 1189.10 and Appendix) filed 12–27–85; effective thirtieth day thereafter. Approved by Fair Political Practices Commission 11–5–85 (Register 85, No. 52).
2. Amendment filed 11–14–91; operative 12–16–91. Submitted to OAL for printing only (Register 92, No. 8).
3. Amendment of Appendix filed 9–8–99; operative 10–8–99. Approved by the Fair Political Practices Commission 7–22–99 (Register 99, No. 37).
4. Amendment of section and Appendix filed 6–25–2002; operative 7–25–2002. Approved by Fair Political Practices Commission 4–30–2002 (Register 2002, No. 26).
5. Change without regulatory effect amending NOTE filed 2–23–2004; operative 2–23–2004. Submitted to OAL for printing only (Register 2004, No. 9).

Appendix

Designated Employees	*Disclosure Categories*
Members and alternates of the Commission on State Mandates	1
Executive Director	1
Chief Legal Counsel (Career Executive Assignment)	1
Staff Counsel	1
Staff Services Manager I, II	2, 3
Staff Services Manager III	1
Staff Services Analyst	2, 3
Associate Governmental Program Analyst	2, 3
Graduate Legal Assistant	1
Information Services Technician	2
Assistant Information Systems Analyst	2
Staff Information Systems Analyst	2
Consultants*	1

Disclosure Category

Category 1 designated employees must disclose all investments, and business positions in business entities, interests in real property, income and gifts from any source.

Category 2 designated employees shall report all investments, business positions in any business entity, interests in real property, income and gifts from any source of the type which has contracted, or in the future may contract with the commission to provide services, supplies, materials, machinery or equipment.

Category 3 designated employees shall report all business positions and income from any school district, local governmental agency or special district which has received, or in the future may receive, state reimbursement under article XIII B, section 6 of the California Constitution.

*The disclosure by consultants is subject to the following limitation:

The executive director may determine in writing that a particular consultant, although a "designated employee," is hired to perform a range of duties that is limited in scope and thus is not required to fully comply with the disclosure requirements in this section. Such written determination shall include a description of the consultant's duties and, based upon that description, a statement of the extent of disclosure requirements. The executive director's determination is a public record and shall be retained for public inspection in the same manner and location as this conflict of interest code.

§ 1189.11. Ethics Orientation.

(a) The commission shall provide an ethics orientation course and establish a schedule for training employees designated in Appendix A by December 31, 2003 and every two calendar years thereafter.

(b) Not later than December 31, 2003, and every two calendar years thereafter, each designated employee shall complete ethics orientation training. Employees who become designated employees after January 1, 2004, shall complete the training within six months of appointment and thereafter according to the schedule established by the commission. Members and alternates of the commission may take training with their employing agency and certify to the commission that they have completed the training.

HISTORY

1. New section filed 2–23–2004; operative 2–23–2004. Submitted to OAL for printing only (Register 2004, No. 9).

* * *

Barclays Official

CALIFORNIA CODE OF REGULATIONS

Title 2. Administration

Division 2. Financial Operations

Chapter 3. Department of General Services

Vol. 2

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Chapter 3. Department of General Services

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Chapter 3. Department of General Services

Subchapter 1. Department of General Services—Conflict of Interest Code

§ 1194. Conflict of Interest Code.

The Political Reform Act (Government Code Section 81000, et seq.) requires state and local government agencies to adopt and promulgate conflict of interest codes. The Fair Political Practices Commission has adopted a regulation (2 California Code of Regulations Section 18730) which contains the terms of a standard conflict of interest code, which can be incorporated by reference in an agency's code. After public notice and hearing it may be amended by the Fair Political Practices Commission to conform to amendments in the Political Reform Act. Therefore, the terms of 2 California Code of Regulations Section 18730 and any amendments to it duly adopted by the Fair Political Practices Commission are hereby incorporated by reference. This regulation and the attached Appendix designating officials and employees and establishing disclosure categories, shall constitute the conflict of interest code for the Department of General Services.

Designated employees shall file statements of economic interests with the Department of General Services. The Department shall make the statements available for public inspection and reproduction (Government Code Section 81008). Upon receipt of the Director's statement, the Department will retain a copy and forward the original to the Fair Political Practices Commission. Statements for all other designated employees will be retained by the Department.

Appendix A

List of Designated Positions	*Assigned Disclosure Categories*
EXECUTIVE DIVISION	
Deputy Secretary (1230)	1
Associate Governmental Program Analyst (Asst. to the Chief Dep. Dir.) (5393)	1
Director, Department of General Services (4601)	1
Informational Officer I/Spec (5601)	1
Seismic Safety Implementation Coordinator (6022)	1
Special Assistant to the Director, Interagency & Customer Relations (1520) Reverted Back	1
Office of Small Business Certification and Resources (OSBCR)	
CMA IV (7470)	2
CSA V (7448)	2
CSA III (7446)	2
CHIEF DEPUTY DIRECTOR	
Chief Deputy Director (4603)	1
Audits	
CMA IV (7470)	6
Legislation	
Assistant Director, Legislation (6963)	1
CMA I (7467)	1
Staff Services Manager I (4800)	1
Office of Legal Services (OLS)	
Assistant Chief Counsel (5934)	1
Chief Counsel, DGS (CEA) (5933)	1
Staff Counsel (5778)	1
Staff Counsel III (Specialist) (5795)	1
Staff Services Analyst (5157)	1
CSA III (7446)	1
MANAGEMENT SERVICES DIVISION	
Deputy Director (CEA III) (7500)	1
Program Research & Evaluation Section (PRES)	
CMA III (7469)	6
Office of Human Resources (OHR)	
Personnel Officer (CEA I) (7500)	4
CMA III (7469)	4
CMA IV (7470)	4
Office of Fiscal Services (OFS)	
CSA III (7446)	2
CSA V (7448)	2
CMA IV (7470)	2
Chief, Office of Fiscal Services (CEA II) (7500)	2
CSA V (7448)	2
CMA IV (7470)	2
CMA III (7469)	2
Office of Risk and Insurance Management (ORIM)	
Associate Risk Analyst (4658)	9
Chief, Office of Risk and Insurance Management (CEA II) (7500)	9
CSA III (7446)	9
CSA V (7448)	9
Associate Governmental Program Analyst (5393)	9
Associate Industrial Hygienist (3856)	9
Staff Services Analyst (5157)	9
Associate Program Analyst (1579)	9
INTERAGENCY SUPPORT DIVISION	
Deputy Director (4602)	1
Office of Administrative Hearings (OAH)	
Administrative Law Judge I (6071)	1
Administrative Law Judge II (Specialist) (6068)	1
Pres Administrative Law Judge (CSA) (6133)	1
Director, OAH (6064)	1
Associate Gov Prog Analyst (5393)	1
Staff Counsel III (5795)	1
CSA III (7446)	1
Legal Counsel (5798)	1
Associate Information System Analyst/Spec (1470)	1
Office of Fleet Administration (OFA)	
CMA I (7476)	10
Associate Governmental Program Analyst (5393) (306–110–5393–001)	10
Automobile Mechanic (Supervisor) (3176)	10
Automotive Pool Manager I (6895)	10
Automotive Pool Manager II (6883)	10
Chief, Office of Fleet Administration (CEA II) (7500)	10
Inspector of Automotive Equipment (6892)	10
Lead Auto Mechanic (6850)	10
Senior Equipment Materials Specialist (1542)	10
Senior Inspector of Automotive Equipment (6855)	10
Staff Services Analyst (General) (306–129–5157–002)	10
CSA III (7446)	10
Associate Information System Analyst/Spec (306–110–1470–001)	10
Office of Public School Construction (OPSC)	
CMA V (7471)	1
Assistant Executive Officer, State Allocation Board (5366)	1
Deputy Executive Officer, OPSCD (CEA II) (7500)	1
Executive Officer, OPSC (4238)	1
CMA IV (7470)	1
CSA V (7448)	1
CMA I (7467)	1
Office of State Publishing (OSP)	
Associate Governmental Program Analyst (5393)	8
Associate Printing Plant Superintendent (7222)	8
Business Service Assistant (Specialist) (4707)	8
CSA I (7444)	8
CMA I (7467)	8
CSA II (7445)	8
Staff Services Analyst (5157)	8
CSA III (7446)	8
CMA III (7469)	8
State Printer, DGS (7220)	8
Staff Information System Analyst/Spec (1312)	8
CMA IV (7470)	8
Associate Information System Analyst/Spec (1470)	8
PROCUREMENT DIVISION	
Procurement Officer (4884)	1
Office of Procurement (OP)	
Associate Information System Analyst (Specialist) (1470)	2
Associate Programmer Analyst (Specialist) (1579)	2
Chief, Office of Information Services (CEA II) (7500)	2
Data Processing Manager I (1381)	2
Data Processing Manager II (1834)	2
CMA IV (7470)	2
CSA III (7446)	2
CMA II (7468)	2
CSA III (7446)	2
Staff Info Sys Analyst/Spec (1312)	2
Sys Software Spec I (1587)	2

List of Designated Positions	*Assigned Disclosure Categories*
Business Services Assistant (4707)	2
Warehouse Manager II (1500)	2
Sr Information System Analyst (Sup) (1337)	2
Area Sup I (6811)	2
Area Sup II (6942)	2
Assistant Procurement Engineer (3395)	2
CSA V (7448)	2
Associate Governmental Program Analyst (5393)	2
Associate Information System Analyst Specialist (1470)	2
Associate Materials Analyst (4901)	2
Associate Procurement Engineer (3396)	2
Associate Transportation Analyst (4535)	2
Bus Services Officer II (4970)	2
CSA I (7444)	2
Buyer II (4891)	2
CSA IV (7447)	2
CMA I (7467)	2
CMA IV (7470)	2
CSA I (7444)	2
CMA IV (7470)	2
CSA V (7448)	2
Senior Electronic Data Processing Acquisition (Technical) (1368)	2
Senior Procurement Engineer (3393)	2
Staff Electronic Data Processing Acquisition (Specialist) (1361)	2
Staff Services Analyst (5157)	2
Staff Services Manager I (4800)	2
CSA V (7448)	2
CMA IV (7470)	2
Surplus Property Officer (4917)	2
Warehouse Manager (1501)	2
REAL ESTATE SERVICES DIVISION	
Planning Officer, Deputy Director (5038)	1
Assistant Deputy Director, RESD (7500)	1
Buildings and Property Management (BPM)	
CMA V (7471)	12
CSA VI (7449)	12
Chief, Buildings and Property Management (CEA III) (7500)	12
CSA III (7446)	12
CSA III (7446)	12
CSA IV (7447) CSA II (7445)	12
CMA III (7469)	12
Staff Services Manager I (4800)	12
CSA V (7448)	12
Project Management Branch (PMB)	
CMA V (7471)	5
Chief, Project Management Branch (CEA III) (7500)	5
CSA III (7446)	5
Project Director II (4020)	5
Project Director III (4023)	5
Senior Environmental Planner (4713)	5
Senior Estimator of Building Construction (4063)	5
Associate Construction Analyst (4106)	5
Senior Real Estate Officer (9597)	5
CSA VIII (7446)	5
CSA V (7448)	5
Staff Services Analyst (5157)	5
Associate Governmental Program Analyst (5393)	5
Asset Planning and Enhancement Branch (APE)	
CMA V (7471)	1
CMA IV (7470)	1
CSA V (7448)	1
Developmental Officer (3333)	1
CEA (7500)	1
Senior Real Estate Officer (9597)	1
Business Operations, Policy & Planning (BOPP)	
CSA III (7446)	1
CSA V (7448)	1
Customer Account Management Branch (CAM)	
CMA III (7469)	1
CMA IV (7470)	1
RESD Professional Services Branch (PSB)	
CEA III (7500)	1
Professional Services Cost Control (PSCC)	
CMA V (7471)	1
CSA VIII (7451)	1
CSA V (7448)	2
CSA III (7446)	2

List of Designated Positions	*Assigned Disclosure Categories*
Professional Services Environmental Services (PSES)	
CMA IV (7440)	1
Senior Environmental Planner (4713)	2
Associate Environmental Planner (4711)	2
Professional Services Energy Assessments (PSEA)	
CMA V (7471)	1
Energy Resources Specialist I (4807)	1
Energy Resources Specialist II (4806)	1
CMA II (7468)	1
CMA III (7469)	1
Professional Services Real Estate Services (PSRES)	
CMA V (7471)	1
Chief, Real Estate Services (7380)	1
Senior Real Estate Officer (9597)	1
CSA V (7448)	1
CMA IV (7470)	1
CMA IV (7470)	1
Professional Services Special Programs (PSSP)	
CMA V (7471)	1
CSA VIII (7451)	1
CSA VI (7449)	1
Senior Electrical Engineer (3600)	2
Senior Mechanical Engineer (3579)	2
Senior Architect (3961)	2
Senior Sanitary Engineer (3822)	2
Senior Structural Engineer (3336)	2
Senior Waste Management Engineer (3790)	2
Professional Services Design Services (PSDS)	
CMA V (7471)	2
Senior Architect (3961)	2
Senior Civil Engineer (3120)	2
Senior Electrical Engineer (3600)	2
Senior Landscape Architect (3983)	2
Senior Mechanical Engineer (3579)	2
Senior Sanitary Engineer (3822)	2
Senior Structural Engineer (3336)	2
CSA V (7448)	1
CSA VIII (7451)	1
CMA IV (7440)	1
CSA IX (7455)	1
Professional Services Construction Services (PSCS)	
Chief, Construction Services (CEA III) (7500)	1
Construction Supervisor I (4031)	1
Construction Supervisor II (4030) CMA V (7471)	1
CSA VIII (7451) CSA IX (7455)	1
CSA II (7445)	1
Electrical Inspector II (4034)	1
CSA III (7446)	1
Senior Electrical Engineer (3600)	1
Senior Estimator of Building Construction (4063)	1
Mechanical Inspector II (4037)	1
Restoration Supervisor I (6644)	1
CSA V (7448)	1
Construction Inspector II (4032)	1
Senior Mechanical Engineer (3579)	1
STATE ARCHITECT DIVISION	
Division of the State Architect (DSA)	
Chief of Administrative Operations (9885)	3
Chief Deputy to the State Architect (3943)	3
Senior Architect, DGS (3961)	3
State Architect, DGS (3940)	3
Office of Regulation Services	
Chief, Regulation Services (CEA III) (7500)	3
Fire & Life Safety Officer, OSA (4351)	3
CMA V (7471)	3
CEA I (7500)	3
Senior Structural Engineer (3336)	3
CSA IX (7455)	3
District Structural Engineer (3332)	3
TELECOMMUNICATIONS DIVISION (OT)	
Deputy Director (0787)	11
Office of Telecommunications	
CEA (7500)	11
CSA VII (7450)	11
CSA III (7446)	11
CMA V (7471)	11
CSA VI (7449)	11
CSA VII (7450)	11

List of Designated Positions	*Assigned Disclosure Categories*
Telecommunications System Manger I (Specialist) (306-181-5135-002)	11
CSA III (7446)	11
CMA IV (7470)	11
Assistant Deputy Director, Network Services (0806)	11
CONSULTANTS*	1

*Consultants shall be included in the list of designated employees and shall disclose pursuant to the broadest disclosure category in the code subject to the following limitation:

The Director may determine in writing that a particular consultant, although a "designated position", is hired to perform a range of duties that is limited in scope and thus is not required to fully comply with the disclosure requirements in this section. Such written determination shall include a description of the consultant's duties and, based upon that description, a statement of the extent of disclosure requirements. The Director's determination is a public record and shall be retained for public inspection in the same manner and location as this conflict of interest code.

Appendix B

Category 1

A designated employee in this category must report all sources of income, interests in real property, investments and business positions in business entities.

Category 2

A designated employee in this category must report investments and business positions in business entities, and sources of income, which provide services, supplies, materials, machinery or equipment of the type utilized by the department.

Category 3

A designated employee in this category must report investments and business positions in business entities, and sources of income of the type which provide services, equipment, supplies, or training for or under the supervision of the Office of the State Architect.

Category 4

A designated employee in this category must report investments and business positions in business entities, and sources of income of the type which provide training services and/or consultant services in the field of training.

Category 5

A designated employee in this category must report investments and business positions in business entities, and sources of income of the type which engage in land development, construction or acquisition or sale of real property, and all interests in real property.

Category 6

A designated employee in this category must report investments and business positions in business entities, and sources of income of the type which provide services, supplies, equipment, or training in the area of data processing, microfilm or records management.

Category 7

A designated employee in this category must report investments and business positions in business entities and income from sources of the type which sell, rent, or service office machines, copiers, and reproduction equipment.

Category 8

A designated employee in this category must report investments and business positions in business entities and income from sources of the type which provide any of the following: graphic arts supplies, pressroom equipment, bindery equipment, trucking services, printing and machinery equipment, or any other paper or printing supplies.

Category 9

A designated employee in this category must report investments and business positions in business entities and income from any type of insurance company, brokerage firm or firms dealing in film and projection equipment.

Category 10

A designated employee in this category must report investments and business positions in business entities and income from sources of the type which provide vehicles, parts, services, supplies, or any other product or service for the Office of Fleet Administration.

Category 11

A designated employee in this category must report investments and business positions in business entities and income from sources of the type which provide electronic, two-way radio, telephone, or any other telecommunication equipment, parts or service for the Telecommunications Division.

Category 12

A designated employee in this category must report investments and business positions in business entities and income from sources of the type which provide services, equipment, supplies, or training for the Office of Buildings and Grounds.

NOTE: Authority cited: Sections 87300 and 87304, Government Code. Reference: Section 87300, et seq., Government Code.

HISTORY

1. New Subchapter 1 (Articles 1-5, Sections 1194-1199) filed 7-11-77; effective thirtieth day thereafter. Approved by Fair Political Practices Commission 2-15-77 (Register 77, No. 29).
2. Repealer of Subchapter 1 (Articles 1-5, Section 1194-1199) and new Subchapter 1 (Section 1194 and Appendix) filed 3-18-81; effective thirtieth day thereafter. Approved by Fair Political Practices Commission 12-1-80 (Register 81, No. 12).
3. Editorial correction providing correct addresses for the Department of General Services and the Fair Political Practices Commission and providing separate listing for appendices A and B (Register 96, No. 46).
4. Amendment of General Provisions and appendices A and B filed 11-13-96; operative 12-13-96. Approved by Fair Political Practices Commission 9-13-96 (Register 96, No. 46).
5. Amendment printing the conflict of interest code in full and amendment of Appendix A filed 1-11-2001; operative 2-10-2001. Approved by Fair Political Practices Commission 11-6-2000 (Register 2001, No. 2).

Subchapter 1.5. Contract Protest Procedures; Protest Procedures for Consulting and Services Contracts

§ 1195. Definitions.

As used in this article:

(a) "Department" shall mean the Department of General Services.

(b) An "interested party" shall be defined as one of the following:

(1) The State agency which proposed the protested award;

(2) A protestant claiming to be the lowest responsible bidder meeting specifications, or, in any other instance, where the protestant claiming that the protestant would have been the awardee if the prescribed procedure for making the award had been followed.

(3) The proposed contract awardee.

(c) "Protestant" shall be an interested party who files a protest.

(d) "Detailed Statement of Protest" shall mean the written document filed with the department by the protestant within five days of the notice of protest. It shall contain all of the grounds upon which the protestant bases the protest.

(e) "Good Cause" shall be defined only as one of the following events or conditions:

(1) Death of a party, representative or attorney of a party, or witness to an essential fact, or the parent, child or member of the household of such person, when it is not feasible to substitute another representative, attorney or witness because of the proximity of the hearing date.

(2) Incapacitating illness of a party, representative or attorney of a party, or witness to an essential fact when it is not feasible to substitute another representative, attorney or witness because of the proximity of the hearing date.

(3) Lack of notice of hearing as provided in Section 1194.2.

(4) Stipulation for continuance signed by the protestant and awarding agency which is timely communicated with request for continuance to the Department of General Services.

(5) Substitution of the representative or attorney of a party upon showing that the substitution is required.

(6) Unavailability.

(A) Unavailability of a party, representative, attorney or witness to an essential fact on account of conflicting and required appearance in a judicial matter if:

1. When the hearing date was set, the person did not know and could neither anticipate nor at any time avoid the conflict.

2. The conflict with request for continuance is immediately communicated to the Department of General Services.

(B) The unavailability of a party, representative or attorney or material witness due to an unavoidable emergency.

NOTE: Authority cited: Sections 10376, 10378, 10343 and 10345, Public Contract Code. Reference: Sections 10376, 10378, 10343 and 10345, Public Contract Code.

HISTORY

1. New Subchapter 1.5 (Sections 1195–1195.6, not consecutive) filed 4–19–85; effective upon filing pursuant to Government Code Section 11346.2(d) (Register 85, No. 16).

§ 1195.2. Disposition Procedures.

Following receipt of a protest filed as prescribed by these regulations, the department shall determine whether the protest is to be resolved by written submission of material or by public hearing. In the event a public hearing is to be held, the department shall set a date, time and place for the hearing and shall so notify all interested parties not less than 5 calendar days in advance of the hearing. The department may, in its discretion upon notice to all interested parties, change the date of, postpone or continue the hearing at the request of an interested party upon a showing of good cause or upon its own motion.

The location of the hearing shall be at the discretion of the hearing officer and situated for the convenience of all parties.

In the event the protest is to be determined through written submissions, notice shall be sent to all interested parties, each of whom may submit written argument in support of its position in accordance with the deadline established by the hearing officer. The determination that the protest hall be determined through written submission shall be made upon the hearing officer's evaluation that oral or additional testimony would be unnecessary to a full understanding of the issues.

Any written submission to the department including that submitted for purposes of the hearing shall be in an original and two copies, together with proof of service of a copy to each interested party.

At any time the department finds that a protest is clearly insufficient on its face, entirely without merit, or outside the scope of the jurisdiction of the department, it may make final disposition of the protest forthwith.

NOTE: Authority cited: Sections 10376, 10378, 10343 and 10345, Public Contract Code. Reference: Sections 10376, 10378, 10343 and 10345, Public Contract Code.

§ 1195.4. Powers and Responsibilities of the Hearing Officer.

The hearing officer shall have the following powers when conducting a hearing:

(a) issue orders;

(b) rule on requests and motions;

(c) grant extensions of time, upon showing of good cause;

(d) examine witnesses;

(e) waive or modify these rules to accommodate the needs in a specific case, upon notice to the parties;

(f) set time for submission of any written material.

NOTE: Authority cited: Sections 10376, 10378, 10343 and 10345, Public Contract Code. Reference: Sections 10376, 10378, 10343 and 10345, Public Contract Code.

§ 1195.5. Decisions.

The department shall make its decision on any protest within thirty (30) calendar days after submission for decision to the department and shall serve a copy thereof, on all interested parties.

NOTE: Authority cited: Sections 10376, 10378, 10343 and 10345, Public Contract Code. Reference: Sections 10376, 10378, 10343 and 10345, Public Contract Code.

§ 1195.6. Form of Notice.

Any notice required by, or made pursuant to, this article shall be in writing and shall be served in person or by deposit in the United States mail properly addressed with sufficient postage affixed.

NOTE: Authority cited: Sections 10376, 10378, 10343 and 10345, Public Contract Code. Reference: Sections 10376, 10378, 10343 and 10345, Public Contract Code.

Subchapter 2. California State Police Division

(Originally Printed 3–22–45)

Article 1. General

§ 1201. Definitions.

As used in this article:

(a) "Department" means the Department of General Services of the State of California.

(b) "Director" means the Director of the Department of General Services.

(c) "State buildings and grounds" and "state buildings or grounds" are synonymous with "State Capitol buildings and grounds" and with "Capitol buildings and grounds" and include all property owned, leased, rented, controlled, used, or occupied by any Department or part thereof of the Government of the State of California.

(d) "Shall" is mandatory and "may" is permissive.

(e) "Park" is synonymous with "State Capitol Park" or "State Capitol Grounds" and includes the area located in the blocks bounded by 9th and 10th, L and N Streets and 10th and 15th, L and N Streets, in the City of Sacramento, State of California.

(f)"Vehicle" means any device in, upon, or by which any person or property is or may be propelled, moved, or drawn.

(g) "Commercial Vehicle" means a vehicle of a type used or maintained for the transportation of persons for hire, compensation or profit or designed, used or maintained primarily for the transportation of property.

(h) "State Police" means the California State Police Division of the Department of General Services.

NOTE: Authority cited: Section 14685, Gov. Code.

HISTORY

1. Repealer of subchapter 2 (sections 1201–1214) and new subchapter 2 (sections 1201 through 1216) filed 10–1–68 as an emergency; effective upon filing (Register 68, No. 37). For prior history, see Registers 28, No. 7; 63, No. 2; 65, No. 4 and 66, No. 40.
2. Certificate of Compliance—section 11422.1, Gov. Code, filed 12–6–68 (Register 68, No. 46).
3. Editorial correction of printing error in subsection (c) (Register 93, No. 29).

§ 1202. Rules and Regulations for the Government of State Police Division.

The Chief of the California State Police Division may, with the approval of the Director, establish such rules and regulations for the government of the State Police as are necessary to properly execute the duties and functions of his office consistent with accepted police methods, procedures and administrative policies connected therewith.

§ 1203. Order to Leave.

No person shall remain in or upon any of the State buildings or grounds after having been ordered or directed by a member or security officer of the California State Police Division or a State building manager to leave said building or grounds, provided, said order or direction to leave is issued after determination of one or more of the following:

(a) (Reserved)

(b) Said persons, alone, or in conjunction with others, is creating loud and unusual noises which impede or disturb the public employees in the performance of their duties or which otherwise impede or disturb the general public from obtaining the administrative services provided on the property.

(c) Said person, alone, or in conjunction with others, obstructs or interferes with the usual use of entrances, foyers, corridors, offices, elevators, stairways, garages, or parking lots, or creates a health and/or safety hazard in such use.

(d) Said person is in or on a building or grounds, or area thereof, or during the hours when, said building or grounds is not open to the general public, and said person does not have authority or lawful reason to be there.

(e) Said person refuses to comply with an emergency order.

HISTORY

1. Amendment filed 11–29–72 as an emergency; designated effective 11–29–72 (Register 72, No. 49).
2. Certificate of Compliance as to 11–29–72 filing filed 3–7–73 (Register 73, No. 10).
3. Amendment of subsection (a) filed 3–7–73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 10).
4. Order of Repeal of subsection (a) filed 6–3–85 by OAL pursuant to Government Code Section 11349.7; effective thirtieth day thereafter (Register 85, No. 26).

§ 1204. Obstructions.

No person shall, or shall attempt to build, construct, set up, place or maintain, in or upon any of the State buildings or grounds, any tent, platform, booth, bench, table, building or other structure, without first having the written permission of the Director or the Chief of State Police, to do so.

§ 1205. Parking, State Capitol Grounds.

(a) No person shall stop, park or leave standing any vehicle on the State Capitol grounds located in the blocks bounded by 9th and 10th, L and N Streets, and 10th and 15th, L and N Streets, in the City of Sacramento, State of California, except:

(1) Members of the State Legislature.

(2) The operator of any vehicle which vehicle displays in plain view while so stopped, parked or left standing on said grounds, a valid parking permit issued by the Chief of State Police under the authority and direction of the Director or by the State Senate Rules Committee or the State Assembly Rules Committee.

(3) Persons stopping or parking a vehicle when necessary to avoid conflict with other traffic or in compliance with a traffic control signal device or the direction of the State Police or a State Police Officer or State Security Officer in control of traffic.

(4) Persons stopping or parking a vehicle temporarily in areas designated by the Chief of State Police for the purpose of loading or unloading merchandise or picking up or discharging passengers, and then only for the period of time required to load or unload, pick up or discharge such merchandise or passengers.

(5) Persons temporarily stopping, parking or leaving a vehicle where such vehicle is disabled in such manner and to such extent that it is impossible to avoid stopping and temporarily leaving such disabled vehicle.

(b) Unless otherwise directed by the Chief of State Police, or by a State Police Officer, or State Security Officer, no person shall stop, park or leave standing any vehicle on said State Capitol grounds unless such vehicle is parked, stopped or left standing in areas designated for public parking and in conformance with such signs as may be posted on said grounds from time to time

[The next page is 215.]

(c) Parking permits shall be issued by the Chief of State Police under the authority of and under such conditions as may be prescribed by the Director. Said parking permits shall be subject to revocation or suspension at any time. Unless sooner revoked or suspended, such permits shall expire at the end of the calendar year in which issued.

(d) No person shall stop, park or leave standing any vehicle on any part of the driveways running from L Street to the State Capitol Garage and from N Street to said garage.

(e) No person shall stop, park or leave standing any vehicle on any part of the loading area adjacent to the State Capitol Garage and west of the driveway from N Street to said garage except persons who have obtained permits from the Chief of State Police for parking spaces designated by him or persons who are actually loading or unloading merchandise at the loading dock.

(f) No person shall stop, park or leave standing any vehicle on any property of the State of California, except where such vehicle displays in plain view a valid parking permit issued by the authorized employee or officer of the State, or the person shall have received permission to so park from the Agency in control of said property.

(g) Where parking is permitted pursuant to the payment of a stipulated parking fee, based on an hourly or daily rate, the Agency shall use in quadruplicate the following form of agreement in lieu of collecting the parking fee due in the event a person parking a vehicle is unable to pay the parking fee due because such person is without funds.

Form G58 (Rev. 1)

AGREEMENT TO PAY PARKING FEE

STATE OF CALIFORNIA
DEPARTMENT OF GENERAL SERVICES
Transportation Service

Date _____ **Time** _____ **AM / PM**

The undesigned hereby acknowledges that on the date and at the time indicated hereon he was without funds to pay the parking fee of $_____, which said amount he acknowledges to be the correct amount due in consideration of his having parked on State property for which a fee is payable.

The undersigned also acknowledges his obligation to pay the said fee to the State Garage shown below within five (5) calendar days from the date above or be subject to citation for violation of Section 13160 of the Government Code and Section 21113 of the California Vehicle Code.

_____
(Signature)

_____
(Street Address)

_____
(City)

_____
(Driver's License No.) (Expires)

_____
(Witness)

White—Section copy
Canary—Accounting Officer copy
Pink—Customer copy
Green—Garage copy

(GARAGE STAMP)
39693-999-756 (404 2-65 25 QUAD 1 OSP

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§ 1206. Soliciting.

NOTE: Authority and reference cited: Section 14685, Government Code.

HISTORY

1. Repealer filed 1-20-83; effective thirtieth day thereafter (Register 83, No. 4).

§ 1207. Dogs, Cats, and Other Animals.

(a) Dogs, cats, and other animals are prohibited in the Capitol Park, for other than official or authorized purposes, except when held by the custodians thereof, or on a leash. Unleashed dogs or cats shall be subject to impounding in a manner consistent with the applicable municipal, county and state laws and ordinances.

(b) Dogs, cats, and other animals are prohibited in State buildings and grounds, except:

(1) Seeing eye dogs.

(2) Animals held or leashed as described in paragraph (a) within the confines of Capitol Park or other State grounds.

(3) Animals which are authorized for exhibit or used for official or authorized purposes.

NOTE: Authority and reference cited: Section 14685, Government Code.

HISTORY

1. Amendment filed 1-20-83; effective thirtieth day thereafter (Register 83, No. 4).

§ 1208. Demonstrations, Gatherings, or Public Assemblies and Parades.

The holding or conducting of any demonstration, gathering, public assembly or parade on or in State buildings and grounds is prohibited unless a permit for such activity has been issued by the Chief of the State Police Division or his designate. The Chief of the California State Police or his

designate shall issue a permit within five days of receipt of a complete and proper application therefor providing all of the following criteria are met:

(a) The subject activity is not a "commercial activity" as defined in subsection (g).

(b) The activity planned can be conducted in the area designated without creating or causing a risk of injury or illness to persons or risk of danger to property and will not impede the performance of public business to be conducted in the area.

(c) There is no conflict as to time, place, manner, and/or duration of the subject activity with activities for which permits have been issued or are pending issuance. Said permit will not be issued earlier than sixty (60) days prior to the planned activity.

(d) An application for said permit must be received by the California State Police not later than five (5) working days prior to the date of the planned activity and must contain the following minimum information:

(1) The name of the individual or group conducting the activity; and

(2) The date of the planned activity; and

(3) The specific requested location for the activity; and

(4) A general description of the activity, including equipment and facilities to be used, and approximate starting and concluding times; and

(5) Approximate number of persons expected to be in attendance;

(6) Names, addresses and telephone numbers of the chief monitors who will be designated to coordinate and direct the activity.

One (1) monitor shall be designated for each fifty (50) persons expected to be in attendance. Said monitors shall wear some uniform distinctive emblem, insignia, or article of wearing apparel at all times during the activity for identification purposes. Said emblem, insignia, or article shall be described or indicated on the application; and

(7) Name(s), address(es), and telephone number(s) of persons who are responsible for clean–up of the area after the activity.

(e) Upon the demonstration by the applicant of a showing of good cause, a permit may be issued with less than five (5) working days notice provided the other criteria are met.

(f) No exclusive rights to permits for designated events shall be issued for consecutive future years to any one applicant.

(g) For the purposes of this section of the regulations, the term "Commercial Activity" shall mean an activity undertaken with a primary purpose of obtaining a profit for the benefit of an individual or business entity organized for profit, as opposed to an activity whose purpose is an expression of ideas or causes, whether of a religious, artistic, political, charitable, educational or cultural nature, where the commercial aspects involved are incidental to the activity.

(h) For the purposes of this section of the regulations, the term "demonstration" shall be defined in the following manner: "Demonstration" includes demonstrating, picketing, the sale of non–commercial printed matter or materials, marching, moving in procession, holding of vigils, and other like forms of activity which involve the communication of expression, orally or by conduct, of views or grievances, engaged in by one or more persons, the conduct of which has the effect, intent or propensity to draw a crowd or onlookers.

(i) For the purposes of this section of the regulations, the term "gatherings" shall mean an assemblage of more than two persons whose purpose for meeting is for other than the conducting of legitimate state business and whose organizing will have the effect, intent or propensity to draw a crowd or onlookers.

NOTE: Authority cited: Section 14685, Government Code. Reference: Section 14685, Government Code.

HISTORY

1. Order of Repeal filed 6–3–85 by OAL pursuant to Government Code Section 11349.7; effective thirtieth day thereafter (Register 85, No. 26). For prior history, see Register 73, No. 10.
2. New section filed 6–24–85 as an emergency; designated effective 7–3–85 (Register 85, No. 26). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 10–31–85.
3. Certificate of Compliance as to 6–24–85 order transmitted to OAL 10–24–85 and filed 11–26–85 (Register 85, No. 48).

§ 1209. Operation and Use of Bicycles, Rollerskates, Skateboards, and Other Wheeled Conveyances.

(a) The riding, operation or use of bicycles, rollerskates, skateboards, tricycles, or other wheeled conveyances is prohibited on State buildings and grounds except as follows:

(1) That portion of Capitol Park known as the "Thirteenth Street Walk" and described as that portion of Thirteenth Street between L and N Streets.

(2) Wheeled conveyances used by handicapped persons.

(3) Rollerskating is permitted, from dusk to dawn, seven days a week, on paths, walks and driveways in that portion of the State Capitol grounds extending from 13th Street to 15th Street and from L Street to N Street.

(4) Rollerskating is permitted from 6 p.m. to dusk, Monday through Friday and from dawn to dusk on Saturdays, Sundays and holidays on the State Capitol grounds extending from 10th Street to 13th Street and from L Street to N Street.

In no event shall rollerskating be permitted upon the steps of the Capitol, or in the interior of the Capitol or in the interior of any other state building, or in the driveway extending from L and N Streets into the State Capitol Garage.

(b) The parking of bicycles on State buildings and grounds is prohibited except at designated bicycle parking racks or facilities established by the Department.

(c) Otherwise permissible riding or operation of wheeled conveyances under this section shall be prohibited if such conveyance is operated or ridden in a manner other than is reasonable or prudent having due regard for pedestrians, weather, visibility, the traffic on, and the surface and width of the area's grounds.

In no event shall a wheeled conveyance be operated or ridden at a speed which endangers the safety of persons or property.

NOTE: Authority and reference cited: Section 14685, Government Code.

HISTORY

1. Amendment filed 1–20–83; effective thirtieth day thereafter (Register 83, No. 4).

§ 1210. Loitering in Park.

NOTE: Authority and reference cited: Section 14685, Government Code.

HISTORY

1. Repealer filed 1–20–83; effective thirtieth day thereafter (Register 83, No. 4).

§ 1211. Commercial Vehicles.

NOTE: Authority and reference cited: Section 14685, Government Code.

HISTORY

1. Repealer filed 1–20–83; effective thirtieth day thereafter (Register 83, No. 4).

§ 1212. Flower Beds and Lawns.

(a) The walking on or crossing over or through flower beds or other areas within the park where plants, shrubs, trees or any other growing things, other than lawns, are located is prohibited.

(b) The picking of or in any way damaging, mutilating or destroying flowers, plants, shrubs or any other growing thing in the park is prohibited.

(c) The walking on or crossing over lawns or terraces within the park is prohibited where such walking or crossing over is likely to cause damage to said lawns and terraces.

§ 1213. Games and Sports.

The playing of games which involve running, jumping, tackling, strenuous activity or physical contact between players, including but not limited to football, baseball, frisbee, golf, catch, and soccer, in the State Capitol is prohibited.

NOTE: Authority and reference cited: Section 14685, Government Code.

HISTORY

1. Amendment filed 1–20–83; effective thirtieth day thereafter (Register 83, No. 4).

§ 1214. State Capitol Garage.

NOTE: Authority and reference cited: Section 14685, Government Code.

HISTORY

1. Repealer filed 1–20–83; effective thirtieth day thereafter (Register 83, No. 4).

§ 1215. Dangerous Weapons or Articles.

HISTORY

1. Order of Repeal filed 6–3–85 by OAL pursuant to Government Code Section 11349.7; effective thirtieth day thereafter (Register 85, No. 26).

§ 1216. Signs, Posters, Placards, Banners.

(a) Carrying, transporting or using signs, posters, placards or banners exceeding thirty inches (30″) by thirty inches (30″) in size in or on any State building or grounds is prohibited unless prior written permission has been obtained from the Director or the Chief of the State Police or his designate whose review, under this section, shall not be made on the basis of content.

(1) The size of the handles or supports for such signs, posters, placards or banners shall be limited to one–fourth inch (1/4″) in thickness by three–fourth inch (3/4″) in width and shall extend no more than eighteen inches (18″) beyond a single exterior edge of such sign, poster, placard or banner except with the prior written permission of the Director or the Chief of the State Police.

(2) All such handles or supports shall be of wood without exception.

(b) All such signs, posters, placards or banners shall be hand carried and not in any way affixed, fastened, or attached to the premises; nor self–supporting and placed for display; nor leaned against any wall, partition, or other portion of a State building or grounds.

(c) The carrying of such signs, posters, placards or banners in a way that obstructs freedom of passage over or through, or in State buildings or grounds is prohibited.

NOTE: Authority and reference cited: Section 14685, Government Code.

HISTORY

1. Amendment filed 1–20–83; effective thirtieth day thereafter (Register 83, No. 4).

§ 1219. Review of Denial or Cancellation of Permits.

The denial or cancellation of a permit under Section 1208 shall state the reasons for such denial or cancellation. Within five days of the notification of the denial or cancellation the applicant or permittee may apply to the Department of General Services for a review of the reasons for the denial or cancellation. The proceedings for review shall be held within five working days thereafter before the Director of the Department or his/her delegate.

NOTE: Authority and reference cited: Section 14685, Government Code.

HISTORY

1. New section filed 1–20–83; effective thirtieth day thereafter (Register 83, No. 4).

Subchapter 3. Fairs and Expositions Division

HISTORY

1. Subchapter 3 (Sections 1300–1329, not consecutive) repealed by operation of Chapter 1152, 1973 Statutes. For prior history, see Register 18, No. 1 and Register 63, No. 18.

Subchapter 4. Office of Public School Construction

Group 1. State Allocation Board

Subgroup 1. State Allocation Board—Conflict of Interest Code

NOTE: It having been found, pursuant to Government Code Section 11409(a), that the printing of the regulations constituting the Conflict of Interest Code is impractical and these regulations being of limited and particular application, these regulations are not published in full in the California Code of Regulations. The regulations are available to the public for review or purchase at cost at the following locations:

STATE ALLOCATION BOARD
1130 K STREET, SUITE 400
SACRAMENTO, CA 95814

SECRETARY OF STATE
(ARCHIVES)
1020 "O" STREET
SACRAMENTO, CA 95814

FAIR POLITICAL PRACTICES COMMISSION
428 J STREET, SUITE 800
SACRAMENTO, CA 95804–0807

The Conflict of Interest Code is designated as Subgroup 1, Group 1, Subchapter 4, Chapter 3, Division 2 of Title 2 of the California Code of Regulations, and consists of sections numbered and titled as follows:

Subgroup 1. State Allocation Board—
Conflict of Interest Code

Section
1550. General Provisions
Appendix

NOTE: Authority cited: Sections 87300 and 87304, Government Code. Reference: Sections 87300, et seq., Government Code.

HISTORY

1. Repealer of Subgroups 1–3 (Sections 1550–1745, not consecutive) filed 12–30–76; effective thirtieth day thereafter (Register 77, No. 1). For prior history see Registers 2; 4; 10, Nos. 1 and 5; 18, No. 3; 19, Nos. 1 and 3; 58, Nos. 10 and 13.
2. New Subgroup 1 (Sections 1550–1557; Appendices A and B) filed 4–13–79; effective thirtieth day thereafter. Approved by Fair Political Practices Commission 1–3–79 (Register 79, No. 15).
3. Repealer of Subgroup 1 (Articles 1–5, Sections 1550–1557 and Appendices A and B) and new Subgroup 1 (Section 1550 and Appendix) filed 2–26–81; effective thirtieth day thereafter. Approved by Fair Political Practices Commission 12–1–80 (Register 81, No. 9).
4. Editorial correction of section number (Register 98, No. 49).
5. Amendment of subchapter 4 heading filed 12–3–98 as an emergency; operative 12–3–98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4–2–99 or emergency language will be repealed by operation of law on the following day.
6. Amendment of subchapter 4 heading refiled 3–31–99 as an emergency; operative 3–31–99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7–29–99 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 7–29–99 order transmitted to OAL 8–26–99 and filed 10–8–99 (Register 99, No. 41).
8. Editorial correction adding HISTORY 8 (Register 2001, No. 14).
9. Amendment of addresses for the State Allocation Board and the Fair Political Practices Commission and amendment of Appendix filed 4–4–2001; operative 5–4–2001. Approved by Fair Political Practices Commission 2–15–2001 (Register 2001, No. 14).

Subgroup 2. State Allocation Board Regulations

Article 1. State Allocation Board Meetings

§ 1555. State Allocation Board Quorum.

There are ten persons that are constitutionally or statutorily empowered to vote and act upon matters coming before the State Allocation Board which pertain to the allocation and apportionment of funds to school districts for the purpose of school construction or purposes related thereto pursuant to Government Code Section 15490.

Any six such persons shall constitute a quorum. A consensus vote of at least six such persons is required for all decisions or actions of the Board which expressly pertain to the apportionment or allocation of funds for the purpose of school construction or purposes related thereto.

NOTE: Authority cited: Section 15503, Government Code; and Section 16009, Education Code. Reference: Section 1, Article 16, California Constitution; Sections 7.8 and 15490, Government Code; and Section 16009, Education Code.

HISTORY

1. New section filed 6–23–87; operative 7–23–87 (Register 87, No. 26).
2. Amendment of section and NOTE filed 2–11–2003 as an emergency; operative 2–11–2003 (Register 2003, No. 7). A Certificate of Compliance must be trans-

mitted to OAL by 6–11–2003 or emergency language will be repealed by operation of law on the following day.

3. Amendment of section and NOTE refiled 6–12–2003 as an emergency; operative 6–12–2003 (Register 2003, No. 24). A Certificate of Compliance must be transmitted to OAL by 10–10–2003 or emergency language will be repealed by operation of law on the following day.
4. Amendment of section and NOTE refiled 10–9–2003 as an emergency; operative 10–9–2003 (Register 2003, No. 41). A Certificate of Compliance must be transmitted to OAL by 2–6–2004 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 10–9–2003 order transmitted to OAL 2–6–2004 and filed 3–1–2004 (Register 2004, No. 10).

Subgroup 3. Selection Process for Private Architectural, Engineering Land Surveying or Environmental Services Firms

Article 1. General Provisions

§ 1600. Definitions.

As used in these regulations:

(a) "Small business" firm is one which meets the definition of small business firm as set forth in Title 2, California Code of Regulations, section 1896(n) as may be amended by the Department of General Services.

(b) "Board" means the State Allocation Board.

(c) "Officer" is the Executive Officer of the State Allocation Board or any person delegated by the Officer to act on behalf of the Officer.

(d) "Firm" means any individual, firm partnership, corporation, association, joint venture, or other legal entity permitted by law to practice the profession of architecture, engineering, land surveying or environmental services.

(e) "Architectural, engineering, environmental or land surveying services" are those services to be procured outside State of California Civil Service procedures and of a character necessarily rendered by an architect, engineer, environmentalist or land surveyor, but may include ancillary services logically or justifiably performed in connection therewith.

(f) "Contract" shall mean those contracts let by the Board for architectural, engineering, environmental and land surveying services.

NOTE: Authority cited: Section 4526, Government Code. Reference: Sections 4525–4529, Government Code.

HISTORY

1. New section filed 5–17–91; operative 6–16–91 (Register 91, No. 26).

Article 2. Specific Provisions

§ 1601. Establishment of Criteria.

The Officer shall establish criteria which will comprise the basis for selection for each contract. The criteria shall include such factors as professional excellence, demonstrated competence, specialized experience of the firm, education and experience of key personnel to be assigned, staff capability, workload, ability to meet schedules, nature and quality of completed work, reliability and continuity of the firm, location, and other considerations deemed relevant. Such factors shall be weighed by the Board according to the nature of the contract, the needs of the State and complexity and special requirements of the specific contract for which the services will be provided.

NOTE: Authority cited: Section 4526, Government Code. Reference: Section 4526, Government Code.

HISTORY

1. New section filed 5–17–91; operative 6–16–91 (Register 91, No. 26).

§ 1602. Request for Qualifications.

(a) Where a project requires architectural, engineering, land surveying and environmental services the Officer shall make a statewide announcement through the publications of the respective professional societies, in a construction trade journal and in other appropriate publications.

(b) The announcement shall contain the following information: The nature of the work, the criteria upon which the award shall be made, and the time within which statements of interest, qualification and performance data will be received.

(c) The Officer shall endeavor to provide to all small business firms who have indicated an interest in receiving such, a copy of each announcement for projects for which the Officer concludes that small business firms could be especially qualified. A failure of the Officer to send a copy of an announcement to any firm shall not operate to preclude any contract.

NOTE: Authority cited: Section 4526, Government Code. Reference: Section 4527, Government Code.

HISTORY

1. New section filed 5–17–91; operative 6–16–91 (Register 91, No. 26).

§ 1603. Selection of Architects, Engineers, Land Surveyors and Environmentalists.

After expiration of the period stated in the publications, the Officer shall evaluate statements of qualifications and performance data which have been submitted to the Board. Discussions shall be conducted with no less than three firms regarding the required service. From the firms with which discussions are held, the Officer shall select, for contract negotiation, no less than three, in order of preference, based upon the established criteria, which are deemed to be the most highly qualified to provide the services required. Where three firms cannot be found which could provide the required service, the Officer may then select from the available, applicant firms. Selections based on less than three firms, must be documented with the names and addresses of firms contacted by the Officer and the reasons why the provisions of this section could not be met. This documentation shall be maintained in the State Allocation Board's contract file.

NOTE: Authority cited: Section 4526, Government Code. Reference: Section 4528, Government Code.

HISTORY

1. New section filed 5–17–91; operative 6–16–91 (Register 91, No. 26).

§ 1604. Conflict of Interest/Unlawful Activity.

Governmental agency employees who are related to persons or have interests in business entities seeking to contract under these regulations, shall not participate in any aspect of the contract review or selection process.

Further, any practice that results in an unlawful activity including, but not limited to rebates, kickbacks or any other unlawful consideration, shall be prohibited.

NOTE: Authority cited: Section 4526, Government Code. Reference: Sections 4526 and 87100, Government Code.

HISTORY

1. New section filed 5–17–91; operative 6–16–91 (Register 91, No. 26).

§ 1605. Amendments.

In instances where the Board effects a necessary change in the project during the course of performance of the contract, the contractor's compensation may be adjusted by negotiation of a mutual written agreement in a fair and reasonable amount where the amount of work to be performed by the contractor is changed from that which existed previously in the contemplation of the parties.

NOTE: Authority cited: Section 4526, Government Code. Reference: Section 4528, Government Code.

HISTORY

1. New section filed 5–17–91; operative 6–16–91 (Register 91, No. 26).

§ 1606. Contracting in Phases.

Should the Board determine that is necessary or desirable to have a given project performed in phases, it will not be necessary to negotiate the total contract price or compensation provisions in the initial instance, provided that the Board shall have determined that the firm is best qualified to perform the whole project at a fair and reasonable cost, and the contract contains provisions that the State, at it option, may utilize the firm for other phases and that the firm will accept a fair and reasonable price for subsequent phases to be later negotiated and reflected in a subse-

quent written instrument. The procedure with regard to negotiation provided for in section 6106, of the Public Contract Code shall be applicable.

NOTE: Authority cited: Section 4526, Government Code. Reference: Section 4528, Government Code.

HISTORY

1. New section filed 5–17–91; operative 6–16–91 (Register 91, No. 26).

Subgroup 3.5. Regulations Relating to Surplus School Property; Use of Proceeds

§ 1700. Definitions.

For the purpose of the provisions of Education Code Section 17462, the terms set forth below shall have the following meanings, subject to the provisions of the Act:

"One–time Expenditures" means costs paid by the general funds of a school district that are nonrecurring in nature and do not commit the school district to incur costs in the future, and are exclusive of Ongoing Expenditures.

"Ongoing Expenditures" means costs paid by the general or special funds of a school district in support of employee salaries, benefits and other costs that are associated with ongoing and sustained operations and services.

NOTE: Authority cited: Section 17462, Education Code. Reference: Sections 17462 and 17463.8, Education Code.

HISTORY

1. New subgroup 3.5 (section 1700) and section filed 8–2–2007; operative 8–2–2007 pursuant to Government Code section 11343.4 (Register 2007, No. 31).

Subgroup 4. State School Building Aid

(Printed 3–18–50)

NOTE: Authority cited for Subgroup 4: Section 15503, Government Code. Authority cited for Section 1748: Section 15705, Education Code. Reference: Sections 15700–15795, Education Code.

HISTORY

1. Repealer of Subgroup 4 (Sections 1748–1786, not consecutive) and new Subgroup 4 (Sections 1748–1751) filed 12–30–76; effective thirtieth day thereafter (Register 77, No. 1). For prior history, see Registers 19, No. 16; 21, No. 5; 22, No. 1; 23, No. 2; 24, No. 3; 26, No. 4; 29, No. 2; and 30, No. 4.
2. Amendment of subsection (a) and NOTE filed 4–29–77; effective thirtieth day thereafter (Register 77, No. 18).
3. Repealer of Subgroup 4 (Sections 1748–1751) filed 10–27–82; effective thirtieth day thereafter (Register 82, No. 44).

Subgroup 5. Relating to the State School Building Law of 1952

Article 1. Definitions

§ 1800. Definitions.

(a) For the purposes of these regulations, the terms set forth below shall have the following meanings, subject to the provisions of the Act:

(1) The Act.

Chapter 8, Part 10 of Division 1, Education Code, and amendments thereto.

(2) Application.

A request for an apportionment for a specific purpose or purposes as provided by the Act and these regulations, on forms prescribed by the State Allocation Board, properly executed, together with such other information as may be required.

(3) Attendance Center.

A school maintained at a given location within a school district.

(4) Authorized Agent.

An official or staff member of the school district or the office of the county superintendent of schools, appointed and authorized by resolution of the governing board of the school district to represent that body in all matters pertaining to the Act other than those requiring action by the governing board of the school district.

(5) Available Funds.

All funds of a school district except those received by gift or bequest; amounts in the general funds of the district which are apportionments from the State School Fund, or which are proceeds of a tax levy not earmarked for any purposes for which school district bonds may be issued and sold; or funds derived from Public Laws 864 of 1964 and Public Laws 874 and 815 of 1950.

(6) Board.

The State Allocation Board.

(7) District.

An applicant school district.

(8) Executive Officer.

The Executive Officer of the State Allocation Board.

(9) Facility. All or a portion of any parcel of land, site improvement, utilities, buildings or other building area, furniture, and equipment.

(10) Project. Notwithstanding any other provision in these regulations, the term "project" shall be deemed to include any or all of the purposes for which a school district has applied for an apportionment or apportionments under the provisions of the Act and these regulations.

(11) Replacement. The acquisition or construction of a facility through an apportionment to replace one that is to be sold, destroyed, or otherwise disposed of or removed from use for any school purpose.

(12) Rehabilitation. The structural reconstruction, renovation, alteration, and/or conversion of a building.

NOTE: Authority cited for Subgroup 5: Section 15503, Government Code. Authority cited for Section 1800: Section 16009, Education Code. Reference: Sections 16000–16207, Education Code.

HISTORY

1. Amendment of subsection (a)(5) filed 12–30–76; effective thirtieth day thereafter (Register 77, No. 1). For prior history, see Register 69, No. 7.
2. Amendment of subsection (a)(1) and NOTE filed 4–29–77; effective thirtieth day thereafter (Register 77, No. 18).

Article 2. Application Procedure

§ 1801. Form of Application.

(a) To secure an apportionment a school district shall submit the following in addition to the requirements of Section 16024 of the Act:

(1) A resolution of the governing board of the district, authorizing the application.

(2) An analysis of the funds used or available for capital outlay purposes by the district in such detail as may be prescribed by the Director of General Services. Such analysis shall include information on funds currently available with respect to amounts obligated by contract, set aside or encumbered for given purposes, or free of any encumbrance.

(3) In the event the acquisition of a site is proposed, a copy of the written report of the local planning commission pursuant to the provisions of Section 53091 of the Government Code.

(4) Evidence satisfactory to the Director of General Services regarding the status of the title to any real property that is to be acquired or abandoned for school purposes or upon which school facilities are to be constructed as the result of an apportionment.

(5) A complete inventory of all real property and furniture and equipment owned by the school district.

(6) Environmental impact documents prepared in accordance with the requirements of Section 1850.1 et seq. of these regulations.

(7) Such other information as may be required by the Director of General Services, the Director of Education, or the Board.

NOTE: Authority cited: Section 16009, Education Code. Reference: Section 16009, Education Code.

HISTORY

1. Amendment of section and NOTE filed 4–29–77; effective thirtieth day thereafter (Register 77, No. 18). For prior history, see Register 75, No. 27.

§ 1802. Filing and Review of Applications.

(a) A complete application shall be filed with the Board. Upon receipt thereof, the Executive Officer shall transmit copies to:

(1) The Director of Education for his report, recommendation, and approval of the enrollment estimates and the facilities included in the application as they relate to school planning.

(2) The Director of General Services, for report and recommendation to the Board after reviewing and making the investigations and determinations deemed necessary pursuant to administering the provisions of the Act.

(3) Such other department or agency as the Board or Executive Officer may deem appropriate, for comment and recommendation.

NOTE: Authority cited: Section 15503, Government Code; and Section 16009, Education Code. Reference: Section 16005, Education Code.

HISTORY

1. Amendment filed 12–21–84; effective thirtieth day thereafter (Register 84, No. 51).

§ 1803. Changes in Application After Original Approval.

(a) An applicant for an apportionment may, after approval of an application, request approval by the Board of changes within any project applied for, including a change in the location of a site. Such changes may be approved by the Board provided:

(1) That the changes are deemed necessary by the Board to properly achieve the essential purposes of the application as originally approved.

(2) That, except for changes made under the provisions of Section 1814 hereof, the changes do not increase the total building area of the project application as originally approved by the Board.

(b) Any approval by the Board of such changes shall be deemed to relate back to the date of the original approval and shall have the same effect as if made at the time of such original approval.

§ 1804. Priorities.

(a) The Board determines it is in the interests of the pupils of the state generally to give priority consideration to those districts which will not

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have their resources diminished by deductions from the State School Fund attributable to apportionments which they are unable to recoup because of the limiting effect of Article XIII.A of the Constitution.

(b) Notwithstanding any other provisions of these regulations, for the purpose of making apportionments or of the release of funds under apportionments already made where such latter funds have been encumbered by binding obligations on the part of the districts, applicant districts shall be divided into Groups A, B and C.

(1) Group A shall consist of those districts which the Executive Officer reasonably determines will be able to levy offset taxes over and above the 1% limitation provided by Section 1(a) of Article XIII.A of the Constitution to replace the full amount of deductions from the State School Fund apportionments attributable to the apportionments requested or to the release of apportioned funds.

(2) Group B consists of those districts which do not fall within Group A but which have legally binding obligations or commitments with respect to funds not yet released and those districts which have filed applications prior to June 20, 1978 for exceptional children facilities pursuant to Education Code Section 16196.

(3) Group C consists of districts which do not fall within Group A or B.

(c) Groups A and B shall have first and equal priority and shall be accommodated on a first come first served basis subject to the provision of Subsection (d) hereof.

(d) In any cases when the Board finds that the application of this regulation inequitable or would result in an undue hardship on the pupils of the districts affected as compared with pupils of other districts, irrespective of the group in which such other districts fall, the Board may make exceptions to this regulation.

NOTE: Authority cited: Section 16009, Education Code. Reference: Section 16007, Education Code.

HISTORY

1. Repealer and new section filed 6–26–78 as an emergency; effective upon filing (Register 78, No. 26). For prior history, see Register 77, No. 18.
2. Certificate of Compliance filed 9–21–78 (Register 78, No. 38).

§ 1805. Priority Points for Construction.

HISTORY

1. Repealer filed 6–26–78 as an emergency; effective upon filing (Register 78, No. 26).
2. Certificate of Compliance filed 9–21–78 (Register 78, No. 38).

Article 3. Eligible Facilities

§ 1809. Estimated Average Daily Attendance.

(a) The estimated average daily attendance of a school district as required by Section 16044 of the Act for determining the allowable area of adequate school construction shall be computed as prescribed by this section.

(b) For purposes of this section, the following definitions shall apply:

(1) "Enrollment" means the graded enrollment of minors of the district for the end of the first school month as reported by the school district to the Department of Education on CBEDS or any successor form. CBEDS enrollment or acceptable equivalent data shall be verified by the appropriate County Superintendent of Schools. Comparable enrollment data for the end of the sixth school month is acceptable when verified by the County Superintendent of Schools.

Enrollment shall include only those students who actually reside in the school district and any students who reside in the district but attend school in other than the district of residence. Enrollment shall exclude high school pupils who attend continuation classes.

(2) "Projected enrollment" means graded enrollment as projected by the cohort survival projection method as described in subsection (c), for a period of two years with respect to the elementary grades of the district and for a period of three years with respect to the high school grades of the district. For purposes of this section the term "high school grades of the district" refers to enrollment in grades maintained by the senior high schools of the district and by those junior high schools which maintain classes above the eighth grade.

(3) "Pupil Units attending continuation classes" is a figure computed as follows: First determine the average number of pupil hours of high school attendance in continuation classes per school day in the highest three months of the latest 12 months, then divide said average by six. In making this computation, pupil hours during the regular school day in excess of 15 per week shall be included. Pupil hours for evening or Saturday classes shall be excluded. Multiply the final figure obtained in the preceding calculation by a growth factor which is computed by dividing the "projected enrollment" by the applicable "enrollment" for the most recent year. The figure obtained is the number of "Pupil Units attending continuation classes." In the event the district is applying for a continuation high school facility and has students who have not yet been screened and assigned to continuation classes because of lack of suitable space, the district may submit an identified list of such pupils. The average number of pupil hours of high school attendance in continuation classes per school day as computed above may be augmented by the pupil hours obtained by multiplying the number of names on said list by three, or in the event the district can prove that continuation high school pupils attend classes for an average of more than three hours per day, such larger multiplier may be used. When an identified list of prospective continuation high school pupils is used, the number of pupils on such list shall be excluded from the graded enrollment reported in accordance with Subsections (b)(1) and (c)(1).

(4) "Ungraded pupils assigned to special education classes" means the number of pupils assigned to such classes on the date of the latest reported enrollment, plus a verified count of such pupils who are not attending classes of the district but will become a part of the attendance of the district when approved facilities for such pupils have been completed.

(5) "Estimated average daily attendance" means the projected enrollment multiplied by .97, plus the ungraded pupils assigned to special education classes, plus the pupil units of high school pupils attending continuation classes.

(6) "Housecount" mean an enumeration of new housing units that are under construction, i.e. units that have at least reached the stage of foundations in place, and have not yet been completed and occupied, classified by type of housing unit as the Board may prescribe. Such housing units shall not include hotel or motel accommodations or other living quarters generally used as transient or short–term accommodations, but may include spaces under construction for mobile homes which the Board determines to be essentially for long–term occupancy. The definition of housecount prescribed herein may be modified from time to time as may be necessary to classify new housing units in the most appropriate manner for the purpose of measuring the pupil yield of such units.

(c) The projected enrollment shall be determined by the cohort survival method in accordance with the following, and by the use of such forms and instructions as the Board may prescribe.

(1) List either the latest enrollment for the end of the second school month or the subsequent sixth school month and the enrollments for the same period for three preceding years. All applications approved by the Board after April 30 of any given year may be based on either the enrollment from the sixth month of the current school year or the preceding second school month of the current school year. Such enrollment shall be listed by level for each grade included in the application. High school applications shall also list the three highest grades of the component elementary districts.

(2) Determine the numerical change in enrollment between each given grade in one year and the next higher grade in the succeeding year for each period and grade listed in (1) above. With respect to kindergarten enrollment (or first grade enrollment if no kindergarten is maintained), determine the numerical change in kindergarten (or first grade) enrollment between each period listed in (1) above, or alternatively, annual changes in

enrollment based on a local census or survey of preschool children conducted according to such procedures as the Board may prescribe.

(3) Compute the average annual change in enrollment for each grade maintained at the grade level of the application, said average being a weighted average computed by multiplying the most recent annual change in enrollment by three, the next most recent change by two, and the earliest change by one, and dividing the sum of such weighted changes by six.

(4) Progress the latest reported enrollment through the applicable two or three year projection period modifying the grade progression each year by the average annual change for each grade as computed in (3) above.

(d) From the projected enrollment compute the estimated average daily attendance as defined in Subsection (b)(5), above.

(e) In the event that the land area of the district is less than 75 percent developed and that there is good reason to believe the number of pupils being added from construction of new housing units exceeds the number implicit in the cohort survival computation, the Board may, at its discretion, modify the estimated average daily attendance as follows:

(1) Determine the graded enrollment one year from the latest reported enrollment by a one–year grade progression, adjusted for dropouts at the high school level.

(2) Determine the enrollment derived from new homes implicit in the cohort survival computation as follows: (i) subtract the enrollment computed in (1) above from the one–year projection of enrollment as determined by the cohort survival method; (ii) to the remainder, add two percent of the latest enrollment for the end of the first or sixth school month, whichever is applicable. If the foregoing computations result in a negative number, such number shall be deemed to be zero.

(3) Determine the pupil yield per housing unit of housecount, as established by a survey of all occupied housing units in the district, for the current year and the two preceding years. The survey shall take into consideration the different pupil yields of multiple and single family housing units or other significant yield characteristics. The current year yield factor for each type of housing unit shall be modified by the average annual difference of the factor for each type for the two preceding years.

(4) In the event that prior year data referred to in (3) is unavailable, the current yield factor shall be modified as the Board shall prescribe.

(5) Establish the pupil yield of the housecount by multiplying the number of housing units in the housecount by the applicable yield per housing unit as determined above. Subtract the enrollment from new homes determined in (2) above from the yield of the housecount; the result of this computation is the amount by which the graded enrollment computed under the cohort survival method shall be changed.

(6) The housecount and surveys described in (3) and (4) shall be conducted by the district in accordance with methods, procedures, and standards which are approved by the Office of Local Assistance with respect to each specific case.

NOTE: Authority cited: Section 15503, Government Code; and Section 16009, Education Code. Reference: Sections 16004 and 16044, Education Code.

HISTORY

1. Repealer of subsection (e) filed 8–12–76 as an emergency; effective upon filing (Register 76, No. 33). For prior history, see Register 75, No. 33.
2. Certificate of Compliance filed 11–17–76 (Register 76, No. 47).
3. New subsection (e) filed 4–26–77; effective thirtieth day thereafter (Register 77, No. 18).
4. Amendment of subsection (a) and NOTE filed 4–29–77; effective thirtieth day thereafter (Register 77, No. 18).
5. Amendment filed 12–21–84; effective thirtieth day thereafter (Register 84, No. 51).

§ 1809.1. Estimated Average Daily Attendance—Sites and/or Plans.

(a) The estimated average daily attendance of a school district for establishing eligibility for site purchase and/or plans preparation applications in advance of an application for construction on such site pursuant to Section 16039 of the act, shall be determined as provided by Section 1809 of these regulations except as follows:

(1) The enrollment projection described in Subsection 1809(c) shall be for a period of four years with respect to elementary schools and for five years with respect to high schools.

(2) The term "housecount" may include, in addition to the enumeration specified in Subsection 1809(b)(6), residential lots not yet built upon which are included in a tentative tract map that has been filed and has been approved by the appropriate agencies of local government.

(b) In those instances where a district has filed an application and received approval for construction which includes the purchase of a site within the acreage guidelines published by the Department of Education in a publication entitled "School Site Analysis and Development" dated 1966, the Board may concurrently approve an application under Education Code Section 16039 for advance purchase of such additional acreage as is necessary to enlarge the site to the size justified by such guidelines for the master planned site for this location.

NOTE: Authority cited: Section 16009, Education Code. Reference: Section 16044, Education Code.

HISTORY

1. New section filed 6–16–72 as an emergency; effective upon filing (Register 72, No. 25).
2. Certificate of Compliance filed 7–20–72 (Register 72, No. 30).
3. Amendment of subsection (a)(2) filed 12–3–76; effective thirtieth day thereafter (Register 77, No. 1).
4. Amendment of section and NOTE filed 4–29–77; effective thirtieth day thereafter (Register 77, No. 18).

§ 1809.3. Estimated Average Daily Attendance—Alternate Method for Construction Project.

(a) The estimated average daily attendance of a school district as required by Section 16044 of the Act for determining the allowable area of adequate school construction may be computed as prescribed by this section under the following conditions:

(1) That the school district has available financing equal to the total estimated cost of the project. Such financing can be either in the form of proceeds from bonds or unsold bonding capacity which has been authorized for sale by the voters of the district.

(b) For the purposes of this section, the following special definition shall apply:

(1) "Projected enrollment" means graded enrollment as determined by the cohort survival projection method described in subsection 1809(c). For elementary grades of the district, enrollment is projected for three years; for high school grades, a four–year projection is made. For purposes of this section, "high school grades" of the district refers to enrollment in senior high schools and in those junior high schools beyond eighth grade.

All other definitions as provided in subsection 1809(b) shall relate to this section.

(c) For the purposes of this section, the projected enrollment shall be determined according to subsection 1809(c) with the following exception:

(1) Progress the latest reported enrollment through the applicable three– or four–year period, modifying each grade progression by the appropriate annual change.

Subsections 1809(d), 1809(e), and 1809(f) shall also apply to this section.

NOTE: Authority cited: Section 16009, Education Code. Reference: Section 16044, Education Code.

HISTORY

1. Amendment of subsections (a) and (c) and NOTE filed 4–29–77; effective thirtieth day thereafter (Register 77, No. 18). For prior history, see Register 76, No. 47.

§ 1809.4. Estimated Average Daily Attendance—Alternate Method for Site and/or Plans Project.

(a) The estimated average daily attendance of a school district for site purchase and/or plans preparation applications in advance of an application for construction on such site pursuant to Section 16039 of the Act may be computed as prescribed by this section under the following conditions:

(1) That the school district has available financing equal to the total estimated cost of the project. Such financing can be either in the form of proceeds from bonds or unsold bonding capacity which has been authorized for sale by the voters of the district.

(2) That whenever a site and/or plans application is approved by the Board pursuant to this section, the Board shall make an apportionment to cover the cost of the entire project. The Board shall then require that available district financing be applied either to reduce apportionments previously made or as a district contribution toward any previously approved project, whichever the Board may determine.

(b) For the purposes of this section, the projected enrollment shall be determined according to subsection 1809(c) with the following exception:

(1) The enrollment projection shall be made for five years in the case of elementary grades and for seven years in the case of high school grades.

(c) All other subsections of Sections 1809 and 1809.1 shall also apply to this section.

NOTE: Authority cited: Section 16009, Education Code. Reference: Section 16044, Education Code.

HISTORY

1. New section filed 3–21–75 as an emergency; effective upon filing (Register 75, No. 12).
2. Certificate of Compliance filed 7–3–75 (Register 75, No. 27).
3. Amendment of subsection (a) and NOTE filed 4–29–77; effective thirtieth day thereafter (Register 77, No. 18).

§ 1810. Allowable School Building Area.

(a) The allowable school building area for a school district as a whole, including building area that is located other than at an attendance center, shall not exceed the sum of the allowable building area for the attendance centers of the district as determined in accordance with the provisions of Section 16044 through 16056 of the Act and these regulations.

(b) In computing the allowable building area of an applicant district for the purposes of the Act, the building area for which applications have been approved, building area which has been otherwise financed or any building area which has been acquired under the terms of a lease–purchase agreement shall be included as existing adequate school building area, except:

(1) The area of any portable building being acquired under a lease–purchase agreement through the use of general funds of the district shall not be included as adequate school building area until (a) the end of ten (10) years from execution of the original lease–purchase agreement, or (b) the district has acquired title pursuant to said agreement, whichever occurs first; and

(2) The area of portable classrooms being acquired under an apportionment made pursuant to Section 16015 of the Education Code shall not be charged as adequate building area.

(c) For the purpose of determining the allowable square footage of building area for which an apportionment may be made under the Act, all calculations shall be based on the total adequate building area of the district and the estimated average daily attendance of all the schools of the district.

(d) For the purpose of computing the allowable building area permitted to a district, the following shall apply:

(1) The estimated average daily attendance of the district shall be as determined in accordance with Section 16044 of the Act and Section 1809 of these regulations.

(2) Existing and proposed building area shall be computed in accordance with the following:

(A) All measurements shall be made from exterior rough wall lines.

(B) Totally enclosed space shall be counted as full area. Among the various types of space to be included shall be areas such as:

1. Basement rooms and basement boiler rooms.
2. Heater rooms, including those above the normal floor level.
3. Each floor of multi–story buildings.

(C) Certain partially enclosed areas shall be counted as full area and shall include:

1. Open, covered areas which provide shelter between buildings that are less than 20 feet apart.
2. Mezzanines open on one or more sides which may easily and readily be used or converted to use as instructional space or passageways.
3. Each floor of library stacks.

(D) Covered unenclosed space shall be counted as one–half of the actual area. Included in such space are:

1. Open, covered passages, arcades, lunch shelters, porches, and planting areas.
2. Open, covered areas which provide shelter between buildings that are 20 feet apart or more.
3. Overhangs and sun control devices which are so designed and located that they function as, and in lieu of, covered walks or other shelter areas.
4. Mezzanines for storage purposes.

(E) Areas which shall not be counted include:

1. Eaves and sun control devices except as specified above.
2. Unsheltered platforms and steps.
3. When isolated from building structures, the area of incinerators, pumphouses, transformer vaults, and service yards.
4. Elevator shafts where constructed in order to comply with Chapter 7 of Division 5 of the Government Code (commencing with Section 4450), relating to facilities for handicapped persons.
5. The area of completely enclosed stairs for each floor level served.

(3) All of the existing building area owned or operated by the district, regardless of conditions or purpose for which it is used, shall be reported to the board by the district as prescribed in this regulation.

(4) The existing school building area for the purpose of computing the allowable building area shall include only the adequate school building area of the district, except that which may be exempted pursuant to the provisions of Section 16042 of the Act.

NOTE: Authority cited: Section 15503, Government Code; and Section 16009, Education Code. Reference: Section 16045, Education Code.

HISTORY

1. Amendment of subsection (d)(1) filed 12–30–76; effective thirtieth day thereafter (Register 77, No. 1). For prior history, see Register 75, No. 17.
2. Amendment of Section and NOTE filed 4–29–77; effective thirtieth day thereafter (Register 77, No. 18).
3. Amendment of subsection (d) filed 12–21–84; effective thirtieth day thereafter (Register 84, No. 51).

§ 1810.1. Allowable School Building Area for Facilities for Exceptional Children.

(a) With respect to projects for which application is made under Article 3, Chapter 8, Part 10, Division 1 of the Education Code, and in conformity with the requirements of Section 16198 of the Education Code, the board establishes allowable building areas for the education of physically handicapped, educationally handicapped, and mentally retarded minors, to be computed as follows:

(1) Divide the number of eligible pupils by the maximum class size established by law for special day classes for the type of pupils to be enrolled, and increase the quotient to the next highest integer where a fractional amount is produced.

(2) Multiply the number computed in (1) by the maximum building area allowance shown below when the facility is planned for the following types of exceptional children:

Types of Pupils in Class	Maximum Class Size		Area Allowance—Sq. Ft.		
	Ages 3–8	Ages 9–20	K–8	7–9	9–12
Autistic	6	6	1080	1080	1080
Aphasic, Multihandicapped*, or Deaf or Combination of Deaf and Severely Hard of Hearing	6	8	1235	1335	1360
Blind or severely Hard of Hearing, or Combination of Blind and Partially Seeing	8	10	1290	1410	1440
Partially Seeing	10	12	1290	1410	1440
Educationally Handicapped	12	12	1080	1080	1080
Trainable Mentally Retarded	12	12	1860	1860	1860
Educable Mentally Retarded	18 See (3)	18 See (3)	1373	1635	1680
Orthopedically Handicapped	12	16	2000 See (4)	2000 See (4)	2000 See (4)
Development Centers for Handicapped Pupils	10	10	2000 See (4)	2000 See (4)	2000 See (4)

*Other than Deaf–Blind Multihandicapped

(3) When the chronological age span of educable mentally retarded minors is greater than four years, the maximum class size shall be 15 pupils.

(4) When facilities to be constructed will include occupational therapy, physical therapy, and related auxiliary spaces for orthopedically handicapped minors, additional building area allowances for such spaces of up to 5,200 square feet shall be made if the facility is designed for one to three classes and up to 7,000 square feet for four to eight classes.

(5) When facilities are to be constructed for deaf blind multihandicapped, a one time additional building area allowance of 500 square feet per school will be made for the initial construction of facilities.

(6) When facilities are to be constructed for blind or partially seeing minors served in an integrated instructional program which is housed in two or more schools, the building area allowance may be allocated among the schools when approved by the Department of Education. No area of instruction shall be allowed which is less than 200 square feet.

(7) When facilities are to be provided for minors having speech defects or disorders, additional building area per school is permitted by Education Code Section 16195(c). This additional area allowance is limited to:

(A) 200 square feet of new building area per school in schools constructed after July 1, 1968, where such schools are designed to permit utilization for remedial and other special services.

(B) 200 square feet of new building area per school in schools constructed between July 1, 1933 and July 1, 1968, where such additional area allowance is used for the construction of a new speech facility.

(C) Conversion of existing facilities or a combination of new construction and conversion of such existing facilities to provide housing for such minors having speech defects or disorders, provided the cost does not exceed the computed cost for 200 square feet of new classroom construction based upon cost standards adopted by the board.

(D) The acquisition of mobile speech therapy facilities, provided the cost does not exceed the combined computed cost for 200 square feet of new classroom construction, based upon cost standards adopted by the board, at all such schools which will be served by the mobile facility.

NOTE: Authority cited: Section 16009, Education Code. Reference: Section 16198, Education Code.

HISTORY

1. Amendment of subsection (a) and NOTE filed 4–29–77; effective thirtieth day thereafter (Register 77, No. 18). For prior history, see Register 74, No. 38.
2. Amendment filed 4–27–78; effective thirtieth day thereafter (Register 78, No. 17).

§ 1810.2. Allowable Building Area for Small Elementary Schools.

(a) For the purpose of computing the building area allowance for small elementary schools in accordance with Section 16047 of the Education Code, the following shall apply:

(1) In an applicant district maintaining any combination of grades kindergarten through 6 with an estimated average daily attendance of less than 300 in such grades:

Estimated ADA in Kindergarten and Grades 1–6	*Maximum Total Building Area (Sq. Ft.)*
6–25	1,600
26–50	3,800
51–75	5,700
76–100	7,200
101–133	8,415
134–166	10,200
167–199	12,000
200–232	13,360
233–285	15,675
286–299	16,500

(2) In an applicant district maintaining any combination of grades kindergarten through 8 with an estimated average daily attendance of less than 300 in grades kindergarten through 6, there shall be allowed, in addition to the maximum total building area shown above, a maximum area of 75 square feet for each attendance unit in grades 7 and 8.

NOTE: Authority cited: Section 16009 Education Code. Reference: Section 16047, Education Code.

HISTORY

1. New section filed 3–17–72 as an emergency; effective upon filing (Register 72, No. 12).
2. Certificate of Compliance filed 6–16–72 (Register 72, No. 25).
3. Amendment of section and new NOTE filed 4–29–77; effective thirtieth day thereafter (Register 77, No. 18).

§ 1810.3. Allowable Building Area for Continuation High Schools.

The estimated average daily attendance for continuation high schools shall be based on those pupil units attending continuation classes (as defined in Section 1809 of these regulations) which are assigned to the continuation high school.

Building area shall be allowed for the continuation high school in accordance with the following schedule.

Pupil Units of Continuation	*Square Feet of High School Building Area*
21 to 40	4,800
41 to 60	4,800 + 120 for each pupil unit over 40
61 to 90	7,200 + 115 for each pupil unit over 60
91 to 120	10,650 + 105 for each pupil unit over 90
121 to 150	13,800 + 90 for each pupil unit over 120
Over 150	16,500 + 60 for each pupil unit over 150

For purposes of this section a continuation high school is defined as a continuation high school which is physically and operationally distinguishable from other schools. If the continuation high school shares space with another type of school, it can be considered to be a continuation high school within the meaning of this section only if the district can show conclusively that the continuation facility is in fact a separate institution with its own administration, teaching staff, and course of study, located in a clearly identifiable building area.

HISTORY

1. New section filed 12–22–72 as an emergency; effective upon filing (Register 72, No. 52).
2. Certificate of Compliance filed 3–19–73 (Register 73, No. 12).

§ 1810.4. Apportionments Under Education Code Section 16015 for Leasing Portable Classrooms During Construction of Permanent Facilities.

(a) The Board shall determine the allowable area and number of portable classrooms for the leasing of which it may make an apportionment pursuant to Education Code Section 16015. For this purpose, the Board may take into account any facilities which the district has already leased or otherwise acquired which are not considered as chargeable area under the Board's regulations.

(b) No apportionment pursuant to this section shall be made for portable classrooms that exceed the number of classrooms in the previously approved construction project referred to in Education Code Section 16015 nor for any that individually exceed 1,000 square feet. The allowable cost of such leasing pursuant to such an apportionment shall not extend beyond a period from the date the construction apportionment for the aforesaid project becomes final to the completion date specified in the construction contract, plus any authorized contract time extensions.

(c) The portable classrooms shall be located on one or more existing school sites with existing school facilities.

(d) Utilities and site development (service and general) shall be limited to the minimum necessary to make the portable classrooms function.

(e) Necessary furniture and equipment to temporarily equip the portable classrooms may be acquired under the previously approved construction application with such furniture and equipment being subsequently returned to the permanent facilities when completed.

(f) Portable classrooms leased on one or successive leases for one or more different projects for a total time in excess of three years pursuant to an apportionment under this section must comply with the requirements of Education Code Section 39243. For the purpose of the preceding sentence, a lease shall be deemed to be successive to a previous lease if from the termination of the previous lease, the portable classrooms leased have not been removed from the premises. "Factory–built" school buildings leased pursuant to Education Code Section 16015 must comply with the requirements of Article 5, Chapter 2, Part 23, Division 3, Title 2 (commencing with Section 39190 of the Education Code).

NOTE: Authority cited: Section 16009, Education Code. Reference: Section 16015, Education Code.

HISTORY

1. Amendment of subsection (b) filed 11–25–77; effective thirtieth day thereafter (Register 77, No. 48). For prior history, see Register 77, No. 18.

§ 1811. Method for Computing Existing Building Area.

(a) For the purposes of this regulation, "service area" may be defined as:

(1) Buildings which when constructed were intended to be used for a purpose to which the provisions of Education Code Sections 39140 to 39155, inclusive, would not apply, whether or not such sections were in effect at the time when the building was constructed; or

(2) Buildings which when constructed were intended to be used for a purpose to which Education Code Sections 39140 to 39155, inclusive, would apply, whether or not such sections were in effect when the building was constructed, but which building has been converted or is intended to be converted, as shown by the application, to be used for purposes to which such sections would not apply.

(b) Service area may include but is not limited to construction used as bus garages, maintenance shops, centrally located district storage and warehouses, custodial houses, utility shelters, transformer vaults, service yards, and administration offices.

(c) Any area constructed for district administrative purposes shall be counted as full area except:

(1) Administrative facilities acquired by the conversion of existing inadequate school facilities. Building area computations for such facilities shall be in accordance with the schedule adopted pursuant to subsections (h)(1) of this regulation or as may be determined by the Director of General Services.

(2) Existing buildings, other than inadequate school facilities, acquired by the district and converted to administrative offices. Such facilities shall be allowed an adjustment in area only where the school district has financing equal to the cost of acquisition and conversion. Such financing can be from either:

(A) The district's General Fund.

(B) Proceeds from the sale of school district bonds. Such bond funds shall not then be considered as "eligible bonded debt service" as defined in Sections 16070(d) and 16084 of the Act. Building area computations for such facilities shall be in accordance with the schedule adopted pursuant to subsection (h)(2) of this regulation or as may be determined by the Director of General Services.

(d) In the event that a school district has expended funds for the purpose of constructing buildings used for housing certificated employees of the district and their families, the area of such buildings and the funds expended therefor shall be accounted for in the following manner:

(1) The area of such buildings constructed or acquired with the proceeds of a tax levied under Chapter 3 (commencing with Section 14200), Part 9, of the Education Code, shall be excluded from the building area of the district.

(2) The area of such buildings constructed or acquired with the proceeds from the sale of school district bonds prior to July 1, 1961, shall be excluded from the building area of the district; however, such bond funds shall not be considered as "eligible bonded debt service" as defined in Sections 16071(d) and 16084 of the Act.

(e) The following shall not be included in any computation of the area of adequate school construction existing in any applicant school district under these regulations:

(1) The area of any building which is or will be used exclusively for a parent cooperative nursery education facility, and for no other purpose, and which building at the time of acquisition thereof by the district was incidental to the purchase of a school site and unsuitable for classroom purposes or which was acquired by the district without expenditure of school district funds.

(2) The area of any building constructed by a school district after September 11, 1957, with funds given or bequeathed to the district after such effective date, and the area of any building given, devised, or bequeathed to a school district after such effective date, including any building given to a district by any city, county, or political subdivision of this Sate.

(3) The area of any building, the construction of which was financed by the proceeds from a tax levied pursuant to Section 10914 of the Education Code, relating to children's centers.

(4) The area of any building which has not been constructed or reconstructed under the provisions of Sections 39140 to 39155, inclusive, Education Code, provided that such area is being used exclusively for adult

education classes during the regular school day and that the operation of such classes has been approved by the Department of Education.

(5) Any building area excluded from the computation of adequate school building construction by adjustments made under Section 16045 of the Act which is subsequently converted to usable instructional area used exclusively for vocational educational programs, provided the conversion was accomplished with federal or district funds.

(6) The area of any building which is or will be used exclusively for a preschool educational program facility pursuant to the provisions of Section 16045, Paragraph 5, Subsection (b) of the Act, provided that the building was constructed, leased or purchased with local general funds, or Federal or State funds allocated specifically for a preschool educational program.

(f) The area of adequate school construction existing in a district at the time of application shall be initially computed as all of the construction area of a district except:

(1) Such area as are to be replaced under standards established by the Board; and

(2) Such areas in an existing structurally inadequate building for which an application has been filed for structural rehabilitation or in a building previously structurally rehabilitated under Sections 16000 to 16207, inclusive, of the Act, as exceed the maximum building area allowed by Section 16044 of said Act for a number of pupils, equivalent to those that could be housed in the building after rehabilitation.

(g) To compute the number of adequately housed pupils for the purposes of subsection (f) above, the following schedule shall apply:

(1) The number of pupils which can be housed in an elementary classroom shall be determined by assigning units of average daily attendance in accordance with the following schedule:

Type of Classroom	*Estimated Average Daily Attendance*
Kindergartens, double session	55
Kindergartens, single session	27
Classrooms, grades 1 through 3	29
Classrooms, grades 4 through 8	33
Classrooms in separate 7–8 grade school	30

(2) The number of pupils which can be housed in secondary school classrooms shall be determined by assigning units of average daily attendance to such classrooms in accordance with a space adequacy survey and the following average class sizes:

Type of Classroom	*Average Class Size*
Academic Classrooms, grades 7–9 or 7–12	30
Academic Classrooms, grades 9–12	28
Laboratory Classrooms, grades 7–12	26
Laboratory Classrooms, grades 9–12	24

(h) If such adequate school building area, when added to the minimum facilities needed by the district, results in a total building area in excess of the amount prescribed in Section 16044 of the Act,then the Board may make the following adjustments to the initial computation or such revisions thereof as the Board, in its discretion, deems desirable:

(1) Service areas constructed prior to July 19, 1947, shall be excluded, except that if any inadequate nonservice area constructed prior to July 19, 1947, is, or will be converted to a service area, such area shall be recomputed by multiplying said area by the percentage determined by dividing the depreciated value of said area by the replacement cost as such value and cost are determined by the Director of General Services. For the purposes of such determination, the Director of General Services shall prepare a schedule setting forth the percentage of usable life remaining in a facility which may be counted as existing adequate service area to be used in making the recomputation of allowable building area under the provisions of this subsection. After the Director of General Services has determined the adjusted area of a building as prescribed in this subsection, the adjusted area of such building shall not thereafter be recomputed or revised.

(2) Service area constructed or acquired on or after July 19, 1947, may be recomputed by multiplying the building area by a factor determined by dividing the original cost of such building area by the computed allowance for standard elementary classrooms for the same building area (excluding any adjustment for small buildings) using the Board's schedule of allowances which was in effect on the date the construction contract was let for the service area or on the date of acquisition of such service area.

If the Director of General Services has determined the adjusted area of a building as prescribed herein, or as this subsection provided heretofore, such adjusted area shall not thereafter be recomputed or revised. The recomputation prescribed by this subsection shall not apply to facilities constructed pursuant to apportionments made under any State School Building Aid Law.

(3) If, after the revised computation of service areas is made as prescribed under subsections (h) (1) and (2) of this regulation, the existing and requested building area of the district is in excess of the schedule set forth in Section 16044 of the Act, the existing building area of nonservice facilities may be determined on the basis of the number of pupils housed by such facilities at an allowance per pupil which is not more than 25 percent in excess of the amount per pupil prescribed in Section 16044 of the Act. For computing the number of adequately housed pupils for the purposes of this subsection, the schedule set forth under subsections (g) (1) and (2) of this regulation shall apply.

(i) If any of the recomputations prescribed by Section 16045 of the Act or by the foregoing provisions of this regulation result in a greater adjustment to the area of existing facilities than is required to permit the district to apply for the minimum additional facilities needed by it as determined by the Department of Education, the adjusted area shall be so increased that the sum of the adjusted area, plus the building area of the minimum additional facilities required by the district will be less than or equal to the maximum permitted by Section 16044 of the Act.

(j) In the event the adjusted existing area of the district as determined pursuant to Section 16045 of the Act or the preceding provisions of this regulation results in a district being unable to apply for the minimum amount of essential instructional facilities required, the adjusted existing area may be reduced, with the approval of the Board, by an amount sufficient to permit such essential instructional facilities to be constructed under the Act. The provisions of Section 16045 of the Act or the preceding provisions of this subsection (j) shall not be interpreted so as to nullify the preceding provisions of this regulation, but instead shall be construed as being for the purpose of alleviating any substantial hardship which might otherwise occur.

NOTE: Authority cited: Section 16009, Education Code. Reference: Sections 16045, 16070, 16084 and 39140–39155, Education Code.

HISTORY

1. Amendment of section and NOTE filed 4–29–77; effective thirtieth day thereafter (Register 77, No. 18). For prior history, see Register 75, No. 43.

§ 1812. Building Cost Standards.

(a) For the purposes of establishing current building cost standards for new construction in accordance with Section 16024 of the Education Code, a study and report thereon shall be made to the Board by the Director of General Services.

(b) Pursuant to the report submitted under Subsection (a) of this regulation, the Board shall establish allowable school building cost standards, which cost standards shall be effective until next revised.

(c) After the initial adoption of allowable building cost standards by the Board, a continuing study of such costs shall be conducted by the Director of General Services. Whenever a finding is made that a one percent or more increase or decrease exists, he shall recommend appropriate revision to the allowable building cost standards.

(d) No application or bid shall be approved and no apportionment shall be made for any construction which exceeds the allowable costs established as provided herein. In the event, however, that it is conclusively shown from any studies by the Director of General Services that actual building costs in an area or portion of an area differ substantially from the allowable costs established for the area, the Board may at any time revise the allowable building cost standards for the area or create additional

areas and establish appropriate allowable cost standards for such additional areas.

(e) The Director of General Services shall determine whether the cost of building construction included in any bid is within the allowable building cost. The district shall provide all information the Director of General Services may require in order to properly segregate building costs from other construction costs.

NOTE: Authority cited: Section 16009, Education Code. Reference: Section 16024, Education Code.

HISTORY

1. Amendment file 2–13–69; effective thirtieth day thereafter (Register 69, No. 7).
2. Amendment of subsection (a) and NOTE filed 4–29–77; effective thirtieth day thereafter (Register 77, No. 18).

§ 1813. Replacement.

(a) An existing school facility may be replaced pursuant to Section 16017 of the Act if, upon investigation, the Board finds that:

(1) The structural stability of the facility, or health or fire hazards constituted a serious threat to the safety of those using the facility, and it would not be economical or good practice to remedy such conditions by repairing or reconstructing the facility; or

(2) The continued use of the facility would be seriously detrimental to the proper education of the children of the district, and it would not be economical or good practice to remedy such conditions by repairing or reconstructing the facility; or

(3) It would not be economical or good practice to rehabilitate and/or use the existing facility because of location or other extenuating circumstances.

(b) All requests for replacement of existing facilities shall be accompanied by:

(1) Full detail prepared by competent authority regarding the existing condition and deficiencies of such facilities, together with complete information regarding any other circumstances involved that would justify replacement;

(2) A statement of the estimated cost and the practicability of embodying the deficiencies of each facility in line with reconstruction standards established by the Board as compared with the replacement costs;

(3) A certified resolution of the governing board of the district, to which is attached a full legal description of the facility to be replaced, together with a title report and plat in the event real property is involved, and containing:

(A) A statement that the facility described in the attachment is the facility which is to be replaced.

(B) A plan, satisfactory to the Director of General Services, for disposition of the facility to be replaced, setting forth the proposed manner of disposition and the date by which disposition is to be accomplished.

NOTE: Authority cited: Section 16009, Education Code. Reference: Section 16017, Education Code.

HISTORY

1. Amendment of subsection (a) and new NOTE filed 4–29–77; effective thirtieth day thereafter (Register 77, No. 18).

§ 1814. Rehabilitation Considered As Replacement.

(a) Where the Board has approved an application which includes rehabilitation of school building facilities, and the Board thereafter makes a finding that by reason of bids actually received, or for other good cause, it would not be economical or good practice to rehabilitate such facilities or portions thereof, such application and approval shall be considered, retroactive to the original dates thereof, to be an application for, and an approval of, the replacement rather than the rehabilitation of such facilities or portions thereof.

§ 1815. Site Development Standards.

(a) The Board shall establish standards for allowable utility services, off–site development, service site development, and general site development to insure that such site development will be within the limits of that which it deems necessary for the adequate operation of the school plant in accordance with good engineering practices. the Director of general Services, after consultation with the Department of Education, shall make such studies and reports as may be required to assist the board in establishing these standards.

(b) For the purposes of this regulation, site development shall be classified as follows:

(1) Utility Services may include but are not limited to facilities required to bring such water, sewer, electricity, telephone, and fuel supply services to such suitable point on the site as may be necessary for the functioning of a project.

(2) Off–Site Development may include but is not limited to such street improvements as are in line with the approved standards of the Board and as are determined by the director of general services to be necessary. In the event a city, county, or city and county requests a high standard of improvement, or improvements in excess of that determined by the Director of General Services to be necessary, the resultant excess costs shall be borne by said city, county, or city and county with or without recourse to the provisions of Section 2117 of the Street and Highways Code.

(3) Service Site Development may include but is not limited to site clearance, rough grading, and drainage which may be required to make a site usable in accordance with standards established by the Board.

(4) General Site Development may include but is not limited to any other development of a site, including such items as grading (except roughgrading), walks, curbs, roadways, parking areas, fencing, flagpoles, incinerators, hard—surfaced and turfed play areas, and playground equipment.

(A) In the event the proposed construction consists of an addition to an existing school plant (whether financed by State funds or by other means) the countable existing construction area and the existing site development shall be evaluated by the Director of General Services in determining any allowance for general site development.

HISTORY

1. Amendment of subsection (b)(2) filed 2–13–69; effective thirtieth day thereafter (Register 69, No. 7).

§ 1816. Furniture and Equipment Standards.

(a) Furniture and equipment within the meaning of Section 16014 of the Act means any article for furnishing and equipping a school plant which:

(1) Meets all the following criteria (to distinguish from supplies)

(A) It retains its original shape and appearance in use.

(B) It is nonexpendable; that is if the article is damaged or some of its parts are lost or worn out, it is usually more feasible to repair it than to replace it with an entirely new unit.

(C) It does not lose its identity through incorporation into a different or more complex unit or substance.

(D) It represents an investment of money which make it feasible and advisable to capitalize the item.

(E) Any item which cannot readily be classified as equipment rather than supplies according to the preceding criteria, shall be deemed to be an item of supplies.

(F) It is not built–in and fixed equipment as determined by the Director of General Services.

(G) It is not classified, pursuant to the Board's direction, as an item, the cost of which is to be paid out of the building cost allowance, irrespective of whether the item in any given instance is a part of the construction contract or is purchased separately from the construction contract.

(b) For the purpose of making apportionments for furniture and equipment and to establish cost standards therefor, the term "classroom or pupil station" as used in Section 16034 of the Act means any space or other facility ordinarily utilized by students, and any auxiliary or general service facilities of the district that the Board determines should be equipped to facilitate proper functioning of instructional facilities or to provide for the health and welfare of the pupils.

(c) Cost standards for furniture and equipment established by the Board shall be based upon the kinds, quality, quantities, unit costs, and

total costs of furniture and equipment usually or most commonly supplied by non-State-aided school districts for comparable facilities, and shall include the effect of cost differentials due to location and periodic changes in the cost of such typical furniture and equipment.

(d) The Director of General Services shall consult with the Department of Education and may independently, or jointly with the Department of Education, make such studies as may be appropriate for the purpose of developing suitable cost standards and revisions thereto. He shall report to the Board thereon once each calendar quarter and at such other times as he may deem warranted.

(e) After the initial adoption of furniture and equipment cost standards by the Board, each such standard shall be reviewed by the Board and continued in effect or revised once each calendar quarter, except that in the event of a substantial omission or error, or in the event of a rapid change in the cost of furniture and equipment, the Board may, at any time, revise the cost standards so affected.

(f) In the event the district has usable equipment on hand, or has encumbered district funds for furniture and equipment in sufficient quantity to equip all or a part of any eligible construction project, the Director of General Services shall determine the value of such furniture and equipment and the amount thereof shall be deducted from the amount otherwise allowable for furniture and equipment. In determining such deduction, the value assigned shall be based on the current value of commonly used new items of average quality and cost which have essentially the same general classification or function. The value assigned to any article may be deemed to be as computed in determining cost standards for furniture and equipment. Where the foregoing is deemed not to be feasible or good practice, alternate methods may be used for determining the adjustment for existing furniture and equipment, provided such methods conform to the intent of this paragraph.

(g) Applications for furniture and equipment shall be submitted to the Board by including such furniture or equipment as may be necessary to:

(1) Furnish or equip facilities appearing in an application for construction filed pursuant to the Act, or to furnish or equip (though not necessarily with the same articles) facilities previously constructed, the furniture or equipment for which will be utilized in whole or in part for the construction applied for; or

(2) Furnish or equip facilities which have been constructed with funds under a grant from the Federal Public Works Act of 1976, where the district would have been eligible for an apportionment of funds for construction of such facilities under the Act.

(h) Apportionments may be made by the Board for furniture and equipment that are substantially in accord with the quality, quantities, unit costs, and total costs of furniture and equipment utilized by the Board in determining cost standards. If any space or function is not equipped, or is equipped on a substantially lesser standard than is prescribed by this paragraph, the Director of General Services shall delete or reduce the allowance approved for such space or function, and shall reduce the project budget and any applicable apportionments accordingly.

(i) The district shall submit a preliminary and a final cost estimate for furniture and equipment requested in an application, complying with the cost standards and allowances established by the Board and containing such detail as the Director of General Services and the Department of Education may require.

(j) The preliminary cost estimate shall accompany the application of the district. A final cost estimate shall be submitted before the final plans and specifications for a construction project are approved by the Director of General Services unless the application is a separate application for furniture and equipment, or the Director of General Services determines that there is good cause for submitting the final cost estimate at a later time. Such final cost estimate shall detail the specific items the district proposes to acquire and the estimated cost thereof. The Director of General Services may approve the final cost estimate and authorize the district to proceed with acquisition of the items therein to the extent that the items in such estimate conform with law and with cost standards and with all requirements of the Board. Such approval shall further be contingent upon first receiving the approval of the Department of Education with respect to the items contained in the final cost estimate, which approval specifies the relative importance or necessity of the items contained in the estimate.

(k) The Director of General Services may approve expenditures for items in order according to their importance or necessity as shown by the final cost estimate, and shall proceed no further than the point where the amount approved equals the amount provided by the cost standards. In the event the total amount approved or expended is less than the amount permitted by the cost standards, the amount of the project budget and the amount apportioned to the district may be reduced accordingly in the manner prescribed by Section 1826 of these regulations.

(*l*) The Director of General Services shall not authorize the use of funds apportioned for furniture and equipment which he may deem to be for the use of school attendance in excess of the estimated average attendance allocated to the construction project unless he determines, on the basis of a supplemental estimate of average daily attendance submitted by the district within two years of the date of the original estimate approved with the application, that the apportionment for such furniture and equipment is justified by reason of the increased attendance shown by such estimate.

(m) Other provisions of this regulation notwithstanding, the Director of General Services may, prior to the time he approves the final plans for a construction project, authorize the purchase of all or a portion of the tables, desks, and chairs requested in the application for such construction project, provided such furniture, because of increased attendance in the district, is required for temporary use in classrooms unit said furniture can be installed in the completed construction project.

(n) Nothing in this regulation shall be construed as a prohibition on the Board or the Director of General Services from requiring competitive bids in any case where, in the judgment of the Board or of the Director of General Services, competitive bids would result in a lower cost for furniture and equipment than would other methods of purchase permitted to school districts.

NOTE: Authority cited: Section 16009, Education Code. Reference: Sections 16014 and 16034, Education Code.

HISTORY

1. Repealer of subsection (g)(2) and amendment of subsection (j) filed 5–29–75; effective thirtieth day thereafter (Register 75, No. 22).
2. Amendment of subsections (a) and (b) and NOTE filed 4–29–77; effective thirtieth day thereafter (Register 77, No. 18).
3. Amendment of subsection (g) filed 4–4–78 as an emergency; effective upon filing (Register 78, No. 14).

Article 4. District Financial Requirements

§ 1820. District Financial Requirements.

(a) In addition to any other requirements of the Act, these regulations, and the apportionment resolution a district shall contribute the following funds as soon as they become available to the district toward the cost of the project or, if the project be completed, toward the reduction of any apportionments previously made:

(1) The net proceeds from the sale, or the fair value as determined by the Director of General Services, whichever is greater, or the net revenue derived from the lease or rental of the following:

(A) Facilities required by the Board to be disposed of, including but not limited to any real property, inadvertently or otherwise not declared in the application, which the Board may deem to be in excess of the needs of the district.

(B) Improvements, materials, crops, and natural resources on a site or sites owned by a district.

(C) Furniture and equipment owned by the district which is replaced, or which is required by the Board to be disposed of or is otherwise disposed of, as the result of an apportionment.

(2) Federal grants of any kind contributable toward the cost of a project approved by the Board, including but not limited to grants that may be made available to a district for the purpose of preparing plans and/or for providing any facility included in an approved application when the enrollment upon which such a Federal grant was justified is substantially the same as that included in an application for State aid.

(3) Any funds (other than specified in (5) below) encumbered for capital outlay purposes, but not subsequently expended for the purposes for which encumbered.

(4) Reimbursements from any company, organization, firm, individual, or public entity for utility construction, installation, connection, or service charges paid by a district with any funds available for the project pursuant to a construction project for which an apportionment has been made.

(5) District funds authorized for any project or projects previously approved by the Board which are in excess of the final costs thereof.

(6) Interest earned on any funds available for costs of a project including interest reasonably attributable to such funds where the same are commingled with other funds earning interest.

(7) Any other financial resources of a district which the Board may deem to be available for the purposes of the application.

(b) The Director of General Services shall determine on behalf of the Board the amount of funds a district is required to contribute under Subsections (1) through (7) above.

NOTE: Authority cited: Section 15503, Government Code. Reference: Section 19572, Education Code.

HISTORY

1. Amendment of subsection (b) filed 12–30–76; effective thirtieth day thereafter (Register 77, No. 1). For prior history, see Register 71, No. 51.

§ 1821. Prior Use or Encumbrance of District Funds Outside Intent of Act.

(a) In considering an application for an apportionment, the Board may review the purposes for which the district has expended or encumbered proceeds from the sale of district bonds authorized to be issued at an election held on or after September 3, 1952. In the event the Board finds that such funds have been expended or encumbered outside the scope and intent of the Act and in contemplation of filing an application under the Act, but that the requirement for contribution of the amount so expended or encumbered in line with the provisions of Section 16031 of the Act will work a hardship on the district, the Board instead may reduce the amount of the requested apportionment by the amount so expended or encumbered, covering such portion of the project as it deems warranted.

NOTE: Authority cited: Section 16009, Education Code. Reference: Section 16031, Education Code.

HISTORY

1. Amendment of section and new NOTE filed 4–29–77; effective thirtieth day thereafter (Register 77, No. 18).

§ 1823. Additional Off–Set Credit for Purposes of State Loan Repayments for Year Round Operation.

(a) Additional off–set credit for purposes of State loan repayments under Chapter 8 may be computed by the Director of General Services provided the district:

(1) Files justification documents under Articles 1, 2 and 3 of Chapter 8 justifying eligible new facilities.

(2) Establishes a year round school operation to house the justified unhoused eligible pupils.

(3) Continues to house the justified eligible pupils in year round schools each fiscal year thereafter.

(b) Any fiscal year in which the year round school operation is not used to house the justified eligible pupils no additional off–set credit will be certified to the State Controller.

NOTE: Authority cited: Section 16009, Education Code. Reference: Section 16025, Education Code.

HISTORY

1. New section filed 3–17–72 as an emergency; effective upon filing (Register 72, No. 12).
2. Certificate of Compliance filed 6–16–72 (Register 72, No. 25).
3. Amendment of subsection (a) and new NOTE filed 4–29–77; effective thirtieth day thereafter (Register 77, No. 18).

Article 5. Project Budget

§ 1825. Contents of Project Budget.

(a) The project budget prescribed by the Board shall be set up under seven major categories as follows: Sites; Plans; Construction; Tests; Inspection; Furniture and Equipment; and Contingencies. Within these major categories, the following limitations shall apply:

(1) Sites:

(A) Actual costs for the acquisition of a site in excess of the estimated cost as originally approved shall be allowed only after specific approval of the Board in accordance with the provisions of Section 16035 of the Act.

(B) In the event the Board determines that excess site costs allowed under subsection (A) above shall be paid in full as a condition of making an additional apportionment for such excess site costs pursuant to the provisions of Section 16035 of the Act, the amount so apportioned shall be paid in full with interest thereon, whether or not the site is combined with a construction project. The amount repayable during each fiscal year on the unpaid balance shall be the greater of:

1. The amount which would be required to provide an annual payment equal to .074 of the principal amount of the apportionment subject to repayment in full provided, however, that any principal and interest charges not repaid in 20 years shall be added to the twentieth annual repayment.

2. The amount which would be produced by a tax rate of five cents per hundred dollars on the assessed valuation of the district as determined by the last equalized assessment occurring during the fiscal year preceding that in which the deductions are to be made by the State Controller. For a unified district receiving an apportionment at both the elementary and high school levels, the aforementioned computation shall be based on a tax rate of ten cents rather than five cents.

(C) For the purpose of this subsection (1825(a)(1)(C)), the term "district" shall include any person or entity with whom the district contracts under Section 7261.5, Government Code, acting on behalf of the district. Relocation costs to landowners or persons displaced pursuant to Sections 7260 et seq. of Chapter 16, Division 7, Title 1 of the Government Code, hereinafter referred to as the "Relocation Assistance Law," in conjunction with an acquisition of a site for which an apportionment is made, may be deemed to be a part of the cost of acquisition subject to the following conditions:

1. The school district shall certify that it has adopted regulations pursuant to the Relocation Assistance Law, as required by Section 7267.8, Government Code, or has contracted with a party or entity specified in Section 7261.5, Government Code, for the performance of services under said law.

2. A request for payment under the Relocation Assistance Law shall be accompanied by:

a. A citation to the pertinent portions of the law and regulations to the extent the latter are applicable.

b. A copy of any such pertinent portion of the regulations, and

c. Any factual justification that may be applicable in connection with the citation referred to in "a.," including, where applicable, justification by the district, subject to the written approval of the Executive Officer, of the reasonableness of any cost of expense applied for by the district under Sections 7262 and 7263, Government Code, that is required to be "reasonable" by said sections.

3. That any offer by the district for said site as specified in Section 7267.2 or 7267.7, Government Code, shall not exceed the highest qualified appraisal of such site made for the purposes of obtaining an apportionment from the Board for the acquisition thereof.

4. That any decision by the district under Section 7266, Government Code (pertaining to the reviewing of the application of an aggrieved person) shall not be in contravention of this subsection (1825(a)(1)(C)).

5. That any cost in conjunction with Section 7264.5, Government Code (relating to the actual provision of housing) shall be justified in writing by the district and approved in writing by the Executive Officer.

6. Nothing in this section shall be deemed to impose upon a school district a fiscal burden in connection with an obligation to a landowner or displaced person that did not exist prior to the adoption of this section.

(D) Relocation assistance in connection with the acquisition of real property shall be administered by the Board in accordance with State Relocation Guidelines adopted by the California Commission of Housing and Community Development.

(E) Before funds are released for any portion of a construction project, evidence shall be presented, satisfactory to the Director of General Services, that good title to the site for said project is vested in the school district, or will be vested in the school district, when the purchase of the site is completed. A use permit deemed by the Director of General Services to be valid, may be considered to be good title for the purpose of this subsection (E).

(2) Plans:

(A) Fees for architectural and engineering services, including architectural supervision, shall not exceed the customary percentage of the final construction cost as approved by the Director of General Services, except that when a previously authorized portion of a project is not constructed, the architect shall be paid only for the fair value, as approved by the Director of General Services, of services actually rendered.

(B) Any cost for or incidental to redesigning or replanning, incurred as a result of bids in excess of allowable construction cost standards, shall not be eligible for reimbursement by the State under the Act.

(3) Construction:

(A) The amount for construction shall be limited to the lowest responsible bid as approved by the Director of General Services.

(4) Tests:

(A) The amount for tests and related inspection shall be limited to the actual costs of tests which are required by Title 21 of the California Administrative Code or other applicable provisions of law, or which are in accordance with good or accepted practice as approved by the Director of General Services.

(5) Inspection:

(A) The amount for inspection shall be limited to the actual costs for the legal duration of the construction contract which shall be deemed to terminate on the date of completion of the work as specified in the contract or as it is changed through such valid extensions as may be granted. Additional inspection costs beyond such date shall be allowed only on a time–worked basis upon evidence, satisfactory to the Director of General Services, that the school district took appropriate action to exercise a claim for damages, and as a result a determination was made that the contractor was not liable.

(6) Furniture and Equipment:

(A) The amount for furniture and equipment shall be that determined pursuant to Section 1816 hereof.

(7) Contingencies:

(A) An amount may be included for contingencies which shall not exceed such maximums as the Board or the Director of General Services may prescribe for any class of application or value of facilities in a project budget.

(B) Contingency funds may be used only after specific approval by the Director of General Services for items of construction or other approved project costs where the cost increase or the item required is necessary for the completion of a facility which has been approved by the Board.

NOTE: Authority cited: Section 16009, Education Code. Reference: Section 16035, Education Code.

HISTORY

1. Amendment of subsection (a)(1) and NOTE filed 4–29–77; effective thirtieth day thereafter (Register 77 No. 18). For prior history, see Register 74, No. 12.

§ 1826. Revision of a Project Budget.

(a) The Director of General Services may revise any item, within a site, plans, site and plans, furniture and equipment, or construction project budget upward or downward, and pursuant to his determination under Section 1820(b) may increase the contribution of the district with a corresponding reduction in State aid and/or apportionment, provided that no revision authorized under this subsection results in an increase in the total amount of the project budget prescribed by the Board or contemplates an expenditure not otherwise permitted by the Act or these regulations.

(b) The Director of General Services may reduce any apportionment or State aid as may be necessary to reflect any revision or contribution made by him pursuant to (a) above. Such reduction shall be deemed to be immediately effective, but the district may to the extent thereof appeal the same to the Director of General Services or to the Board as hereinafter provided, within six months of such revision. If in the judgment of the Director of General Services the basis of the appeal is valid in whole or in part, he may, by appropriate revision of his previous action acquiesce in whole or in part in such appeal. To the extent he does not acquiesce in such appeal, the district may further appeal to the Board either orally or via written documents. The Board shall affirm or modify the reduction of the Director of General Services. The latter shall thereupon revise the project budget and/or financing in any manner necessary to accord with such determination of the Board.

(c) No change order shall be approved or become a basis for revising a construction project if such change order would increase the amount of the construction contract because of additional work performed or to be performed after the notice of completion has been filed or the project has been accepted by the governing body of the school district, whichever first occurs.

(d) The Executive Officer shall not issue authorizations for expenditure of any remaining funds apportioned for the approved purposes of a construction project and/or furniture and equipment after one year has elapsed from the date of completion of the project as determined by the date notice of completion is filed or the date the project is accepted by the governing body of the school district, whichever first occurs, unless the Board specifically so directs after determining that good cause exists therefor.

HISTORY

1. Amendment of subsections (a) and (b) filed 9–17–71 as an emergency; effective upon filing (Register 71, No. 38).

§ 1827. Competitive Bids.

(a) In instances where a school district is not required by the provisions of the Education Code to make purchases or have other work performed by contracts which have been let pursuant to competitive bids, the Director of General Services nevertheless may require such competitive bids whenever he deems it to be in the best interests of the State.

Article 6. Apportionments

§ 1830. Conditional Apportionment.

(a) In addition to complying with any other requirements of these regulations or the Act, the Board, at the time of making a conditional apportionment, shall:

(1) Specify the amount of bonds to be issued and sold by the school district as a condition of an apportionment.

(2) Specify the amount of funds to be contributed by the district.

(3) Approve a total estimated cost and a budget for the project.

(4) Prescribe the purposes for which an apportionment may be expended.

(5) Prescribe the manner, terms, and conditions for releasing the apportionment to the district.

(6) Fix the rate of interest to be paid by the district on the sum apportioned to it in accordance with the provisions of Section 16065 of the Act.

(b) Pursuant to Regulation 1830(a)(1) and Education Code Section 16058(a), the amount of bonds specified to be issued and sold shall be

such as will bring the total amount of bonds outstanding in excess of 95% of, and to within five thousand dollars ($5,000) of the basic bond requirement of Section 16002.5 for the grade level or grade levels maintained by the district as defined in Sections 16002 and 16003. In any instance where an extreme hardship would otherwise result, the board may specify the issuance and sale of a lesser amount of bonds but in no event less than that required by Section 16058(a).

NOTE: Authority cited: Section 16009, Education Code. Reference: Sections 16058(a) and 16065, Education Code.

HISTORY

1. Amendment of subsection (a)(6) and new NOTE filed 4–29–77; effective thirtieth day thereafter (Register 77, No. 18).
2. New subsection (b) filed 1–24–78; effective thirtieth day thereafter (Register 78, No. 4).

§ 1831. Modification of Apportionment.

(a) Notwithstanding anything to the contrary in these regulations, the Board shall have power:

(1) To modify any apportionment or resolution of apportionment, either conditional or final, to provide for an increase in the contribution required of a district to a project, where it appears to the satisfaction of the Board that at the time the conditional apportionment was made, funds were available to a district for the project which were not declared so available, irrespective of any culpability on the part of the district in failing to declare the same.

(2) To require a district to retain and not expend, commit, or encumber funds which the Board finds are available for contribution toward a project as a condition of receiving a future apportionment. For this purpose the Board may regard as available any funds which a district has expended after written notice was given it by the Director of General Services that such funds may be considered as available by the Board.

(3) To modify any apportionment or resolution of apportionment, either conditional or final, where the Board determines that good cause exists therefor.

§ 1832. Apportionment for Multipurpose Rooms.

(a) The portion of any apportionment to be allocated to the cost of a multipurpose room as required under Section 16077 of the Act shall be determined as follows:

(1) Compute the allowable construction cost for the construction project as prescribed by Section 16024 of the Act and Section 1812 of these regulations.

(A) With respect to a reconstruction project, the actual cost of said reconstruction, as determined by bid, shall be deemed to be the allowable construction cost.

(2) Compute the allowable construction cost for the area of the multipurpose room in the manner prescribed by Section 16024 of the Act and Section 1812 of these regulations.

(3) Determine the ratio of the allowable cost of the multipurpose room to the allowable construction cost of the entire project.

(4) Compute the cost of construction for the construction project as the sum of:

(A) The amount of the charge for architectural and engineering services, based on the amount of the construction contract.

(B) The amount of the construction contract.

(C) The cost of construction inspection.

(D) The cost of tests.

(5) Multiply the actual cost of construction as computed under subsection (4) above by the ratio computed under subsection (3) above and add the cost of any furniture and equipment for the multipurpose room.

(6) The portion of the apportionment allocated to the cost of the multipurpose room shall be the amount computed under subsection (5) above or the total amount of the apportionment, whichever is the lesser.

(b) For the purpose of determining the cost of a multipurpose room, the building area of a multipurpose room shall include all appurtenant areas incorporated in, or attached to, the multipurpose room, as shown on the final plans for the construction project, including but not limited to kitchens, snack bars, dining areas, sanitary facilities, arcades required because of the multipurpose room, and separate snack bars or any other facilities determined by the Director of General Services properly to be a part of the cost of a multipurpose room.

NOTE: Authority cited: Section 16009, Education Code. Reference: Section 16077, Education Code.

HISTORY

1. Amendment of subsection (a) and new NOTE filed 4–29–77; effective thirtieth day thereafter (Register 77, No. 18).

§ 1833. Apportionment for Facilities for Exceptional Children.

(a) The portion of an apportionment to be allocated to the cost of facilities for exceptional children pursuant to Article 3 of the Act shall be determined by making the computations for said determination pursuant to Section 1832, and substituting the term, "facilities for exceptional children," wherever the term "multipurpose room" appears in said Section 1832.

§ 1834. Apportionment Procedure, Multipurpose Rooms and Facilities for Exceptional Children.

(a) If a construction project includes a multipurpose room within the meaning of the Act and/or facilities for exceptional children pursuant to Article 3 of the Act, apportionments may be made with respect to the construction project as a whole, without making separate apportionments for such special facilities. At the time an apportionment is made for construction costs, the portions of an apportionment allocated to such special facilities shall be provisionally set forth and identified, and shall be finally determined by the Director of General Services upon the completion of the construction project.

§ 1834.5. Apportionment for Interim Use Lease Portable Classrooms.

(a) Any apportionment made to a school district pursuant to Section 16015 of the Education Code shall be added to the final apportionment for the previously approved project specified in subdivision (a) of above mentioned Education Code section and the repayment thereof by the school district shall be made under the same terms and conditions as described for the final apportionment.

NOTE: Authority cited: Section 16009, Education Code. Reference: Section 16015, Education Code.

HISTORY

1. New section filed 1–24–75 as an emergency; effective upon filing (Register 75, No. 4).
2. Certificate of Compliance filed 4–24–75 (Register 75, No. 17).
3. Amendment of section and new NOTE filed 4–29–77; effective thirtieth day thereafter (Register 77, No. 18).

§ 1835. Method of Payment to School Districts.

(a) Each apportionment upon becoming final shall be certified by the Executive Officer to the State Controller, who shall draw warrants therefor in favor of the county treasurer of the county having jurisdiction over the district, in the manner prescribed by law.

§ 1836. Unencumbered Balance in the State School Building Fund of a School District.

(a) Except as otherwise provided by the Act, any money advanced by the State in the State School Building Fund of a school district which remains an unencumbered balance in excess of the amount required to liquidate all approved costs or expenditures necessary to complete a project shall be returned by the district to the State within sixty days after notice of completion of the construction project has been filed or the project has been accepted by the governing body of the school district, whichever first occurs. The Director of General Services, for good cause, may grant such exceptions to this regulation as he may deem warranted.

§ 1837. Disposition of Property Pursuant to Section 16105—Application of Funds.

(a) For the purposes of this section, the following definitions shall apply:

(1) "Site Only." As used in this section, the term "site only" shall refer to a particular site for which an apportionment is made pursuant to Section 16039, Education Code, together with any concurrent or subsequent apportionment for plans for said site, where such site has not been subsequently used in a construction project for which an apportionment is made.

(2) "Site Only" Apportionment. An apportionment made for a site only.

(3) "Non–Site Only" Apportionment. An apportionment made for sites, buildings, or facilities, other than a "site only" apportionment defined above.

(4) Apportionment "Balance." Unpaid principal and interest.

(5) "Monetary Consideration." Money or a instrument promising to pay money.

(b) "Site Only" Apportionments.

(1) If a district has previously repaid an apportionment for a site only, it may dispose of such site at a later date and retain the proceeds therefrom without the consent of the Board.

(2) If the district has not previously repaid an apportionment for a site only, it may not dispose of such site without the written consent of the Executive Officer as to the disposition and terms thereof, providing that his authority in that regard extends only to a disposition for a 100% monetary consideration. However, the Board, upon application to it by the district prior to such disposition, may consent to such disposition for a non–monetary consideration in whole or part, as for example other property. The entire net monetary proceeds from such disposition shall, in any case, be applied to the reduction of, or to the extent needed, the elimination of, the balance due on said site only apportionment, except to the extent the Board, upon application to it by the district, either before or after such disposition, allows the district to retain any portion thereof for any purpose of the district. Where the district discharges in full the balance due on said site–only apportionment from the net proceeds of such disposition, it may retain any excess from such proceeds over such amount. Where an application is made to the Board under this sub–paragraph, the Executive Officer shall make such recommendation to the Board respecting its action as it deems appropriate.

(c) "Non–Site Only" Apportionments.

(1) If all non–site only apportionments outstanding for which the district is liable have been repaid in full, the district may dispose of any property acquired through any non–site only apportionment, and retain the net proceeds thereof, without the consent of the Board.

(2) As long as a district has any balance due on any non–site only apportionment, no property acquired through a non–site only apportionment may be disposed of without the written consent of the Executive Officer as to its disposition and terms thereof, provided that his authority in that regard extends only to a disposition for a 100% monetary consideration. However, the Board, upon application to it prior to such disposition, may consent to such disposition for a non–monetary consideration in whole or in part, as for example other property. The entire net monetary proceeds from the foregoing disposition shall in any case be applied to the reduction of, or to the extent needed, the elimination of, all outstanding balances for which the district is liable on all non–site only apportionments, except to the extent the Board, upon application to it by the district, either before or after such disposition, allows the district to retain any portion thereof for any purpose of the district. In any case, however, where the district discharges in full the balances due on all outstanding non–site only apportionments from the proceeds of such disposition, it may retain any excess from such proceeds over such amount. Where an application is made to the Board under this sub–paragraph, the Executive Officer may make such recommendation to the Board respecting its action as he deems appropriate.

(d) Nothing contained in Subsections (b) or (c) shall be deemed to supersede any procedure otherwise required under Section 16019.

NOTE: Authority cited: Section 16009, Education Code. Reference: Sections 16015 and 16019, Education Code.

HISTORY

1. New section filed 10–18–74 as an emergency; effective upon filing (Register 74, No. 42).
2. Certificate of Compliance filed 1–24–75 (Register 75, No. 4).
3. Amendment of section and NOTE filed 4–29–77; effective thirtieth day thereafter (Register 77, No. 18).

§ 1838. Title to Real Property.

(a) Title to real property acquired, developed, or improved through the expenditure of an apportionment shall be recorded in the name of the district. The district shall furnish satisfactory evidence of good title to all such property.

NOTE: Authority cited: Section 16009, Education Code.

HISTORY

1. New section filed 3–21–75 as an emergency; designated effective 4–1–75 (Register 75, No. 12).
2. Certificate of Compliance filed 7–3–75 (Register 75, No. 27).

§ 1839. Disposition of Replaced Facilities.

(a) Property, real or personal, replaced through an apportionment shall be disposed of pursuant to these regulations in a manner approved by the Executive Officer and the net proceeds therefrom contributed as a reduction of any apportionment pursuant to Education Code Section 16012.

(b) For the purposes of Education Code Section 16012, "disposed of" is defined as one of the following:

(1) Sale to others of replaced real property and buildings thereon at market value.

(2) Demolition of the buildings, where no real property has been replaced.

(3) Sale to others at market value of the buildings and physical removal from the site, where no real property has been replaced.

(4) Conversion of the use of the building to other than a "school building" as set forth in Section 39214 or conversion to a recreational or community use or which the building is not a "school building" as defined by Section 39141. Such conversion may be approved by the Executive Officer only upon contribution by the district of a sum to be applied as a reduction of the apportionment of not less than $1.00 for each square foot of building area so converted plus the fair market value of any replaced property to be retained with the building. Any building so converted shall have posted in a conspicuous place on such building, a public notice stating that such building does not meet the structural standards imposed by law for earthquake safety for a school building.

(5) Physical conversion of the building to a school building by reconstruction or alteration pursuant to the requirements of the Field Act, Article 3, Chapter 2, Part 23, Division 3, Title 2 of the Education Code (commencing with Section 39140).

(c) Any school district which has received an apportionment for he replacement of a school building or real property and has not submitted a plan acceptable to the Executive Officer for disposition of such replaced property within 2 years of such apportionment or by June 30, 1976, whichever occurs later, shall be deemed to have elected to dispose of such replaced property pursuant to Regulation 1839(b)(4), unless the State Allocation Board deems otherwise, and shall be required to contribute as a reduction of its apportionment the sum to be computed by that regulation.

NOTE: Authority cited: Section 16009, Education Code. Reference: Section 16012, Education Code.

HISTORY

1. New section filed 3–21–75 as an emergency; designated effective 4–1–75 (Register 75, No. 12).
2. Certificate of Compliance filed 7–3–75 (Register 75, No. 27).

3. Amendment filed 4–30–76; effective thirtieth day thereafter (Register 76, No. 18).

4. Amendment of subsections (a) and (b) and NOTE filed 4–29–77; effective thirtieth day thereafter (Register 77, No. 18).

Article 7. Advance Purchase of Sites and Plans

§ 1840. Advance Purchase of Sites and Preparation of Plans.

(a) Except as otherwise provided by the Act or these regulations, the provisions of these regulations shall apply to applications for sites and/or plans and specifications made pursuant to Section 16039 of the Act.

(b) The Executive Officer shall not certify any payment pursuant to an apportionment made under this Section 16039 of the Act and this regulation other than for preliminary or incidental costs of site acquisition, unless the Director of General Services has first approved the purchase price of the property to be acquired and the conditions of the purchase agreement.

(c) Whenever an apportionment is made for the purchase of a site, the district shall, as soon as possible thereafter, undertake to acquire the same by negotiation or otherwise, if it has not already done so. If, during the 30 day period commencing with the date such apportionment becomes final, the district is unable to reach an agreement for the purchase of said site, or any required portion thereof or interest therein (each of which is hereafter referred to as "property") which would be binding except for the approval of the Director of General Services, the district shall forthwith request its legal counsel to commence condemnation proceedings for the acquisition of such property prior to the end of the 30 day period, if it has not already done so. Where the district feels it to be a hardship to complete negotiations within the aforesaid 30 day period, it may apply to the Director in writing, prior to the end of such period, for an extension thereof, which extension or any portion thereof the Director shall grant or refuse in writing.

Whenever this procedure has not been complied with, the Director may refuse to approve the purchase price of property reached by negotiation, even though manifested by a stipulated judgment, or he may, so far as is permitted by Chapter 8, Part 10, Division 1 of the Education Code and to the extent that he deems the failure to comply with this section has increased the cost to the State, require the district to contribute toward the cost of the property funds which would not be otherwise contributable toward any project. The provisions of this section shall be deemed to be a part of every site apportionment.

(d) In the event a school site consists of more than one parcel of property, the Director of General Services may use a condemnation award for a single parcel of the site as the basis of recommending an apportionment in excess of the higher appraisal for the remaining parcels if he finds that it is warranted; and

(1) Time is the essence in the acquisition of school sites and that any delays in the acquisition of approved school sites may result in increased cost of acquisition.

(2) Apportionments for the increased cost of site acquisition will be conditioned upon the school district making special repayments for the excess apportionments as permitted by Education Code 16035 in the following instances:

(A) Where a school district has failed to file condemnation within 30 days of the apportionment becoming final.

(B) Where a school district has failed to acquire the site within one year of the date of filing condemnation.

(3) If for good cause, the applicant is unable to comply with the limitations set forth in recommendation 2B, it may request consideration by the Board of a time extension.

NOTE: Authority cited: Section 16009, Education Code. Reference: Sections 16035 and 16039, Education Code.

HISTORY

1. New subsections (c) and (d) filed 9–18–74; effective thirtieth day thereafter (Register 74, No. 38).

2. Amendment of section and new NOTE filed 4–29–77; effective thirtieth day thereafter (Register 77, No. 18).

§ 1841. Repayment Procedure—Sites and Plans.

(a) All apportionments for sites, comprehensive master plans, or final plans and specifications made pursuant to Section 16039 of the Act (except as provided in subsection (d) hereafter) shall be repaid with interest thereon in full. The amount repayable in accordance with subsection (c) below during each fiscal year on the unpaid balance and accrued interest on the sum of all apportionments made to a district under said Section 16039 of the Act shall be the greater of:

(1) The amount which would be produced by a tax rate of five cents per hundred dollars on the assessed valuation of the district as determined by the last equalized assessment occurring during the fiscal year preceding that in which deductions are to be made by the Controller, as hereafter provided, for the repayment of the aforesaid apportionment. For a unified district receiving an apportionment at both the elementary and high school levels, the aforementioned computation shall be based on a tax rate of ten cents rather than five cents.

(2) The amount which would be required to provide an annual payment equal to .058 of the principal amount of the apportionment subject to repayment under Section 16039 of the Act provided, however, that any principal and interest charges not repaid within 30 years shall be added to the thirtieth annual repayment; and provided further, that if more than one apportionment is made under Section 16039 of the Act, the amount payable under this subsection (2) shall be the sum of the amounts which would be payable on each apportionment if computed separately.

(b) In the event more than one apportionment is made under Section 16039, any amount repaid under subsections (a) (1) and (2) above during any fiscal year shall be applied to each such apportionment for which a repayment would be otherwise due during such fiscal year, in the order in which each such apportionment was made until each such apportionment has been repaid in full with interest.

(c) Except as otherwise provided, the sequence and timing of repayment operations required by this regulation shall be in accordance with applicable provisions of Sections 16070, 16072, 16080, 16088 and 16089 of the Act.

(d) Upon the application of the district affected, or its duly authorized agent, the balance due under any site apportionment heretofore made pursuant to Section 16039 of the Act shall, at any time prior to the time it has been combined with any construction apportionment as provided by said section, be repaid in annual installments as provided in this regulation. Although only the unpaid balance, with interest, shall be paid by the district, the annual installment computed under subsection (a) (2) above shall be that which would apply if no repayment on said apportionment had previously been made.

(e) If a site or final plans and specifications for which an apportionment is made pursuant to Section 16039 of the Act is later used for a construction project for which an apportionment is received under other provisions of the Act, then, as of the date such apportionment becomes final, the balance of the apportionment made under Section 16039 which has not been repaid, and the accrued interest thereon, shall be added to the apportionment for the construction project as provided by Section 16039 (d) of the Act and thereafter no further repayment shall be required pursuant to subsections (a) or (b) of this regulation. If less than all of the plans and specifications are used for a construction project, the Director of General Services shall determine the value of the portion of the plans and specifications used for the construction project. Such value, not exceeding the amount apportioned and unpaid, and the applicable amount of accrued interest shall be added to the apportionment for the construction project as prescribed herein.

(f) A district, if it so desires, may at any time make payments over and above those required by this regulation. Such payments shall, however,

not affect the necessity for making, or the amount of, annual repayments otherwise required by this regulation prior to the time repayment is made in full.

NOTE: Authority cited: Section 16009, Education Code. Reference: Section 16039, Education Code.

HISTORY

1. Amendment of section and new NOTE filed 4–29–77; effective thirtieth day thereafter (Register 77, No. 18).

Article 8. Exceptional Pupils

§ 1845. Exceptional Pupils—General Provisions.

(a) Except as otherwise provided by law or these regulations, the provisions of these regulations shall apply to applications for State School Building Aid for Exceptional Pupils, pursuant to Article 3, Chapter 8, Part 10, Division 1, of the Education Code.

NOTE: Authority cited: Section 16009, Education Code. Reference: Section 16190, Education Code.

HISTORY

1. Amendment of section and new NOTE filed 4–29–77; effective thirtieth day thereafter (Register 77, No. 18).

Article 8.5. Year Round School

§ 1846. Definitions.

(a) In connection with the administration of the provisions of Sections 16026, 16027, and 16028 of Article 1, Chapter 8, Part 10, Division 1, Education Code, and for the purposes of these regulations, the terms set forth below shall have the following meanings:

(1) Application. A request for the Board to provide financial assistance in the form of (a) an apportionment pursuant to Section 16024 of the Education Code,

(b) an authorization to use proceeds from the sale of district bonds, or

(c) an authorization to use proceeds derived from the sale of unused school sites, for the purpose, or purposes, as provided by Code Sections referred to in subparagraph (a) and these regulations, on forms provided by the State Allocation Board, properly executed, together with such other information as may be required.

(2) Project. Notwithstanding any other provisions in these regulations, the term "project" shall be deemed to include the provision of financial assistance in furnishing and installing an air cooling system in those facilities, so long as the construction of any such facility was commenced prior to December 31, 1972, which will be operated under year–round school operation plans or continuous school programs, for which a school district has applied for an apportionment or authorization under the provisions of Education Code Sections 16026, 16027, 16028 and these regulations.

(3) "Year–Round School" defined. A year–round school operation or continuous school program consists of a school schedule in which students in any one school are divided into groups of pupils who attend school in rotating shifts of sessions. A year–round school schedule or continuous school schedule shall consist of not less than 240 days per year in which the school is open. For purposes of State school support, a pupil shall attend school for not less than 175 days.

NOTE: Authority cited: Section 16009, Education Code. Reference: Sections 16026, 16027 and 16028, Education Code.

HISTORY

1. New Article 8.5 (§§ 1846, 1846.1–1846.4) filed 10–17–73 as an emergency; effective upon filing (Register 73, No. 42).
2. Certificate of Compliance filed 1–18–74 (Register 74, No. 3).
3. Amendment of section and NOTE filed 4–29–77; effective thirtieth day thereafter (Register 77, No. 18).

§ 1846.1. Application Procedure.

(a) Form of Application. To secure an apportionment or an authorization to use the proceeds from the sale of district bonds, or an authorization to use proceeds from the sale of unused school sites, a school district shall submit the following in addition to the requirements of Section 16024 of the Act:

(1) A resolution of the governing board of the applicant district authorizing the application.

(2) A resolution of the governing board of the applicant district which indicates the board has adopted and put into effect a year–round school operation plan or continuous school program as defined in these regulations, or has adopted such a plan or program for operation in the following school year.

(3) A copy of the year–round school operation plan or continuous school program adopted by the governing board of the applicant district.

(4) An analysis of the funds used or available for capital outlay purposes by the district in such detail as may be prescribed by the Director of General Services. Such analysis shall include information on funds currently available with respect to amounts obligated by contract, set aside or encumbered for given purposes, or free of any encumbrance.

(5) A statement of the estimated cost of the project certified by a licensed architect or structural engineer currently employed or retained by the district.

(6) Layout (preliminary) plans showing the entire construction project, including the specific location thereof, for which a district desires an apportionment or authorization.

(7) Authorized agent's certification to ownership of site upon which facilities are located that will have the air cooling systems furnished and installed as the result of an apportionment or an authorization.

(8) Such other information as my be required by the Director of General Services.

NOTE: Authority cited: Section 16009, Education Code. Reference: Sections 16026, 16027 and 16028, Education Code.

HISTORY

1. Amendment of section and new NOTE filed 4–29–77; effective thirtieth day thereafter (Register 77, No. 18).

§ 1846.2. Cost Standards.

(a) In accordance with Section 16026 of the Act, the Board shall establish allowable cost standards for furnishing and installing air cooling systems in exiting schools, which cost standards shall be effective until next revised.

(b) Such cost standards as established and eligible work thereunder shall be limited to furnishing and installing of air cooling systems only. Costs for incidental or supplemental work such as, but not limited to, replacing or modifying existing heating systems, insulating, closure of window spaces, and changing lighting fixtures shall not be eligible, unless such incidental work will result in a cost equal to or less than air cooling only.

(c) After the initial adoption of such cost standards by the Board, a continuing study of such costs shall be conducted by the Director of General Services.

(d) No application or bid shall be approved and o apportionment or authorization shall be made by the Board for any construction which exceeds the allowable cost standard established for such apportionment or authorization. In the event, however, that it is conclusively shown from any studies by the Director of General Services that actual costs of furnishing and installing air cooling systems in an area or portion of an area differ substantially from the allowable costs established for the area, the Board may at any time revise the allowable cost standards for such construction for the area.

(e) The Director of General Services shall determine whether the cost of furnishing and installing air cooling systems included in the application or bid is within the allowable cost for such construction. The district shall provide all information the Director of General Services may require for this purpose.

NOTE: Authority cited: Section 16009, Education Code. Reference: Sections 16026, 16027 and 16028, Education Code.

HISTORY

1. Amendment of subsections (a) and (b) file 4–17–74 as an emergency; effective upon filing (Register 74, No. 16).

2. Certificate of Compliance filed 7–22–74 (Register 74, No. 30).

3. Amendment of subsection (a) and new NOTE filed 4–29–77; effective thirtieth day thereafter (Register 77, No. 18).

§ 1846.3. District Financial Requirements.

For the purposes of this Article of these regulations, the district financial requirements shall be as specified under Sections 16027 and 16028 of the Education Code.

NOTE: Authority cited: Section 16009, Education Code. Reference: Sections 16026, 16027 and 16028, Education Code.

HISTORY

1. Amendment of section and new NOTE filed 4–29–77; effective thirtieth day thereafter (Register 77, No. 18).

§ 1846.4. Applicable Regulation Provisions.

Articles 1, 2, 5, 6 and 10 (Sections 1830, 1831, 1835, 1836, 1838, and 1839), of these regulations shall be applicable to the administration of this article except as the context of this article requires otherwise.

NOTE: Authority cited: Section 15503, Government Code. Reference: Section 19571.3, Education Code.

HISTORY

1. Amendment filed 12–30–76; effective thirtieth day thereafter (Register 77, No. 1).

Article 9. Environmental Impact Requirements

§ 1850.1. CEQA Requirements.

These requirements are set forth in the following sections of Title 14, of the California Administrative Code:

SECTION NUMBERS

15001 – 15007	15231
15020 – 15021	15233
15041 – 15045	15261 – 15262
15050	15269
15052	15274
15060 – 15065	15300
15070 – 15074	15300.2
15080 – 15096	15300.4
15100 – 15112	15302
15120 – 15132	15314
15140 – 15153	15350 – 15368
15162 – 15170	15370 – 15376
15201 – 15205	15378 – 15385
15207 – 15227	

NOTE: Authority cited: Sections 21001, 21082, 21083 and 21087, Public Resources Code. Reference: Sections 21082, 21083 and 21087, Public Resources Code.

HISTORY

1. Repealer of Article 9 (Sections 1849–1851) and new Article 9 (Sections 1850.1–1850.19) filed 3–21–75 as an emergency; designated effective 4–1–75 (Register 75, No. 12). For history of former sections, see Registers 67, No. 50; 73, Nos. 12 and 25; and 74, Nos. 25 and 38.

2. Certificate of Compliance filed 7–3–75, except as to Section 1850.3 (Register 75, No. 27).

3. Repealer of former Article 9 (Sections 1850.1–1850.19) and new Article 9 (Section 1850.1) filed 11–14–86; effective thirtieth day thereafter (Register 86, No. 46).

§ 1850.2. Definitions.

HISTORY

1. Repealer filed 11–14–86; effective thirtieth day thereafter (Register 86, No. 46).

§ 1850.3. CEQA Officer.

NOTE: Reference: Section 1500 et seq., Resources Code.

HISTORY

1. Amendment filed 7–3–75 as an emergency; effective upon filing. Certificate of Compliance included (Register 75, No. 27).

2. Repealer filed 11–14–86; effective thirtieth day thereafter (Register 86, No. 46).

§ 1850.4. Applicability of These Rules.

HISTORY

1. Repealer filed 11–14–86; effective thirtieth day thereafter (Register 86, No. 46).

§ 1850.5. Applicability of CEQA and Guidelines.

HISTORY

1. Repealer filed 11–14–86; effective thirtieth day thereafter (Register 86, No. 46).

§ 1850.6. Required Filing by a District.

HISTORY

1. Repealer filed 11–14–86; effective thirtieth day thereafter (Register 86, No. 46).

§ 1850.7. Categorical Exemptions.

HISTORY

1. Repealer filed 11–14–86; effective thirtieth day thereafter (Register 86, No. 46).

§ 1850.8. Notice of Exemption–Rejection by Executive Officer.

HISTORY

1. Repealer filed 11–14–86; effective thirtieth day thereafter (Register 86, No. 46).

§ 1850.9. Non–Exempt Projects—Initial Study.

HISTORY

1. Repealer filed 11–14–86; effective thirtieth day thereafter (Register 86, No. 46).

§ 1850.10. Negative Declaration—Requirements and Attachments.

HISTORY

1. Repealer filed 11–14–86; effective thirtieth day thereafter (Register 86, No. 46).

§ 1850.11. Negative Declaration—Rejection by Executive Officer If Not in Conformity with Law.

HISTORY

1. Repealer filed 11–14–86; effective thirtieth day thereafter (Register 86, No. 46).

§ 1850.12. Negative Declaration–Non–Rejection If in Accordance with Law.

HISTORY

1. Repealer filed 11–14–86; effective thirtieth day thereafter (Register 86, No. 46).

§ 1850.13. EIR—General Requirements.

HISTORY

1. Repealer filed 11–14–86; effective thirtieth day thereafter (Register 86, No. 46).

§ 1850.14. EIR Attachments.

HISTORY

1. Repealer filed 11–14–86; effective thirtieth day thereafter (Register 86, No. 46).

§ 1850.15. EIR for More Than One Project.

HISTORY

1. Repealer filed 11–14–86; effective thirtieth day thereafter (Register 86, No. 46).

§ 1850.16. EIR—Rejection by Executive Officer for Non–Conformity with Law.

HISTORY

1. Repealer filed 11–14–86; effective thirtieth day thereafter (Register 86, No. 46).

§ 1850.17. EIR Evaluation by the Board.

HISTORY

1. Repealer filed 11–14–86; effective thirtieth day thereafter (Register 86, No. 46).

§ 1850.18. Feasibility Studies.

HISTORY

1. Repealer filed 11–14–86; effective thirtieth day thereafter (Register 86, No. 46).

§ 1850.19. Exceptions to Current Requirements.

HISTORY

1. Repealer filed 11–14–86; effective thirtieth day thereafter (Register 86, No. 46).

Article 10. General

§ 1853. Director of General Services.

(a) The Director of General Services shall perform all acts necessary to carry out the provisions of the Act except such functions as are re-

served to the Board and to other agencies by law or by these regulations and shall provide such staff assistance to the Board as may be necessary.

(b) He shall adopt such policies and operating procedures as he deems essential to carrying out the provisions of the Act that are not in conflict with said Act.

§ 1854. Department of Education.

(a) An application may be approved and an apportionment made only after the Board has received the reports, recommendations, and approvals from the Department of Education which are required by the Act.

§ 1855. Compliance with Laws.

(a) All laws, ordinances, rules and regulations otherwise applicable to any project undertaken pursuant to an apportionment made under the Act shall remain applicable to said project otherwise provided by the Act or these regulations.

§ 1856. Limitation of State Responsibility.

(a) In making an apportionment, neither the State nor any department or agency thereof, shall be required to assume any responsibility not otherwise imposed upon it by law.

§ 1857. References to Education Code Prior to Recodification of 1977.

(a) Reference in any document, instruction, procedure, or policy action to any part of the Education Code prior to its recodification in 1977 shall be deemed applicable to the corresponding provisions of such recodified code.

NOTE: Authority cited: Section 16009, Education Code. Reference: Sections 16000–16207, Education Code.

HISTORY

1. Amendment of section and new NOTE filed 4–29–77; effective thirtieth day thereafter (Register 77, No. 18).

§ 1858. Unforeseen Emergency Conditions Justifying an Emergency Meeting of the Board with Less Than One Week's Notice.

NOTE: Authority cited: Section 16009, Education Code. Reference: Section 1125, Government Code.

HISTORY

1. New section filed 6–29–76 as an emergency; effective upon filing (Register 76, No. 27).
2. Repealed by operation of Section 11422.1(c), Government Code (Register 76, No. 44).

Subgroup 5.5. Regulations Relating to the Leroy F. Greene School Facilities Act of 1998: (School Facility Program)

Article 1. General Provisions and Definitions

§ 1859. Purpose.

These regulations implement the Leroy F. Greene School Facilities Act of 1998, which establishes a State program to provide State per pupil funding for new construction and modernization of existing school facilities.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.10 and 17070.35, Education Code.

HISTORY

1. New subgroup 5.5 (articles 1–11), article 1 (sections 1859–1859.2) and section filed 12–3–98 as an emergency; operative 12–3–98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4–2–99 or emergency language will be repealed by operation of law on the following day.
2. New subgroup 5.5 (articles 1–11), article 1 (sections 1859–1859.2) and section refiled 3–31–99 as an emergency; operative 3–31–99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7–29–99 or emergency language will be repealed by operation of law on the following day.
3. New subgroup 5.5 (articles 1–11), article 1 (sections 1859–1859.2) and section refiled 7–29–99 as an emergency; operative 7–29–99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11–26–99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7–29–99 order transmitted to OAL 8–26–99 and filed 10–8–99 (Register 99, No. 41).

§ 1859.1. General Services Director.

The General Services Director, or his or her legal designee shall perform all acts necessary to carry out the provisions of the Act except such functions as are reserved to the Board and to other agencies by law or by Sections 1859 through 1859.107 inclusive. The acts to be performed include, but are not limited to, entering into contracts to administer the Act.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17070.20, Education Code.

HISTORY

1. New section filed 12–3–98 as an emergency; operative 12–3–98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4–2–99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3–31–99 as an emergency; operative 3–31–99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7–29–99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7–29–99 as an emergency; operative 7–29–99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11–26–99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7–29–99 order transmitted to OAL 8–26–99 and filed 10–8–99 (Register 99, No. 41).
5. Amendment filed 6–26–2000; operative 6–26–2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

§ 1859.2. Definitions.

For the purpose of these regulations, the terms set forth below shall have the following meanings, subject to the provisions of the Act:

"Academic Achievement" means to improve one's ability to engage in academic endeavors and to accomplish study in core curriculum areas such as reading, writing, mathematics, fine arts, science, vocational education, technology, history or social science.

"Act" means the Leroy F. Greene School Facilities Act of 1998.

"Adjacent" means the HSAAs that will make up the Super HSAA are adjoining, touching, or share a common geographical boundary.

"Alternative District Owned Site" means a district owned site that is deemed available for the project by the California Department of Education.

"Alternative Education" means community day, county community, county community day, and continuation high schools.

"Alternative Enrollment Projection" means a calculation of projected enrollment by eligible school districts as authorized by Education Code Section 17071.75(a)(1).

"Application" means a request pursuant to the Act to receive an eligibility determination and/or funding for a school project.

"Apportionment" shall have the meaning set forth in Education Code Section 17070.15(a).

"Approved Application(s)" means a district has submitted the application and all documents to the Office of Public School Construction that are required to be submitted with the application as identified in the General Information Section of Forms SAB 50–01, *Enrollment Certification/ Projection,* (Revised 03/05); SAB 50–02, *Existing School Building Capacity*; SAB 50–03, *Eligibility Determination,* (Revised 09/06); and SAB 50–04, *Application for Funding*, as specified in Section 1859.2 "Form SAB 50–04", and the Office of Public School Construction has completed and accepted a preliminary approval review pursuant to Education Code Section 17072.25(a).

"Approved Application for Career Technical Education Facilities Project Funding" means an applicant has submitted an *Application for Career Technical Education Facilities Funding*, Form SAB 50–10, including all required supporting documents as identified in the General Information Section of that Form, to the OPSC and the OPSC has accepted the application for processing.

"Approved Application for Joint–Use Funding" means a district has submitted an *Application for Joint–Use Funding,* Form SAB 50–07, including all required supporting documents as identified in the General In-

formation Section of that Form, to the OPSC and the OPSC has accepted the application for processing.

"Attendance Area" shall have the meaning set forth in Education Code Section 17070.15(b).

"Authority" shall have the meaning set forth in Education Code Section 17078.52(d)(1).

"Board" means the State Allocation Board as established by Section 15490 of the Government Code.

"Career Technical Education Facilities Project" means a project approved by the Board pursuant to Education Code Section 17078.72.

"CBEDS Report" means the enrollment information provided through the California Basic Educational Data System (CBEDS) by school districts to the CDE.

"California Department of Education" (CDE) means the offices within that department that have responsibility for school facilities matters.

"CDE Source School List" means a list developed and published by the CDE that identifies districts and Critically Overcrowded Schools pursuant to Education Code Section 17078.18(c).

"Certification" means the act of affirmatively representing, asserting or verifying circumstances, data or information as required by the Act or this subgroup.

"Charter School" shall mean a school established pursuant to Education Code, Title 2, Division 4, Part 26.8, Section 47600, et seq.

"Charter School Agreements" mean a memorandum of understanding, a funding agreement and a use agreement as established by the California School Finance Authority (CSFA).

"Charter School Facility Account" means the fund for new construction Charter School projects authorized by Education Code Sections 100620(a)(1)(A), 100820(a)(1)(A) and 101012(a)(2).

"Charter School Facilities Program Rehabilitation" shall mean work that includes, but will not be limited to, structural changes or other types of work on an existing district facility that extends the useful life of or enhances the physical environment of the school, and as provided in Education Code Section 17078.58(a).

"Charter School General Location" shall mean a minimum of a one mile radius to a maximum of a three mile radius from the present or proposed location of the Charter School project as identified in the chartering agreement.

"Childcare" means any program that is operated less than 24–hours per day, in which non–medical, licensed care and supervision are provided to children in a group setting.

"Class B Construction Cost Index" is a construction factor index for structures made of reinforced concrete or steel frames, concrete floors, and roofs, and accepted and used by the Board.

"Classroom" means a teaching station that has the same meaning as the term used in Education Code Section 17071.25(a)(1).

"Classroom–Based Instruction" shall have the meaning set forth in Education Code Section 47612.5(e)(1).

"Classroom Provided" means a classroom acquired by lease, lease–purchase, or purchase for which a contract has been signed for the construction or acquisition of the classroom.

"Committee" shall have the meaning set forth in Education Code Section 17070.15(e).

"Conversion Increase Fund" shall be the fund in either the 2002 or 2004, as appropriate, Charter School Facilities Accounts to set aside Preliminary Charter School Apportionment amounts rescinded on or before April 25, 2007, for a Final Charter School Appointment, pursuant to Section 1859.167.

"County Fund" shall have the meaning set forth in Education Code Section 17070.15(j).

"Critically Overcrowded School (COS)" means a school that has a pupil population density greater than 115 pupils per useable acre in grades Kindergarten through six, or a pupil population density greater than 90 pupils per useable acre in grades seven through twelve based on the 2001 CBEDS enrollment.

"Current Replacement Cost" means $346.60 per square foot for Toilet Facilities and $192.60 per square foot for all other spaces. The amounts shown will be adjusted annually in the manner prescribed in Section 1859.71.

"Date of Occupancy" means the date the grant deed is recorded with the County Recorder's Office.

"Demographic Research Unit" (DRU) means this office within the California Department of Finance.

"Department" shall have the meaning set forth in Education Code Section 17070.15(d).

"District Representative" means a member of a school district staff or other agent authorized to serve as "District Representative" to execute and file an application with the Board on behalf of the district and/or act as liaison between the Board and the district.

"Division of the State Architect (DSA)" means the State office within the Department of General Services that reviews school building plans and specifications for structural, fire safety and access compliance.

"Elementary School Pupil" means a student housed in a school serving Kindergarten through sixth grade, or any combination of Kindergarten through sixth grade.

"Encumbered for Specific Purposes" means a commitment of funds by the school district to meet a legally binding obligation.

"Energy Audit" means an energy analysis and report which sets forth the utility savings that could be generated if the proposed project was designed, constructed, and equipped with energy efficiency and renewable technologies that would make the proposed project exceed the minimum building energy–efficiency standards mandated for new public buildings pursuant to the applicable California Building Standards Code.

"Energy Efficiency Account" means the funds set aside by the Board for purposes of Education Code Section 17077.35.

"EnergyPro 3.1" means a computer program approved by the State Energy Resources Conservation and Development Commission that calculates energy efficiency standards.

"Environmental Hardship" means the State funding for site acquisition as authorized by Section 1859.75.1.

"Excessive Cost Hardship Grant" means the funding provided by Section 1859.83.

"Executive Officer" means the individual appointed by the Governor to direct the Office of Public School Construction, and who concurrently serves as Executive Officer to the Board.

"Existing School Building Capacity" means the district's total capacity to house pupils as calculated pursuant to Sections 1859.30 through 1859.33.

"Existing School Site" for purposes of Joint–Use, means real property that has a public school with any grades K–12 and that has at minimum administration and classroom facilities for any grades K–12 and has been assigned a county district school (CDS) code, which meets the criteria of Regulation Section 1859.23.

"Extra Cost" means the added costs to complete a Type II Joint–Use Project as determined in Section 1859.125.1.

"Facility" means all or a portion of any real property, site improvements, utilities and/or buildings or other improvements contained in the project.

"Facility Hardship" means new or replacement facilities authorized by Section 1859.82(a) or (b).

"Field Act Facility" means a school building meeting the requirements contained in Education Code Section 17280, et seq.

"Final Apportionment" means an apportionment made pursuant to Education Code Section 17070.15 by submittal of an application pursuant to Section 1859.21.

"Final Apportionment Unfunded List" means a list of projects where the entire Final Apportionment request was not converted to a Final Apportionment.

"Final Charter School Apportionment" shall mean a Preliminary Charter School Apportionment that has been converted to a Final Charter School Apportionment in accordance with Section 1859.165.

"Financial Hardship" means State funding for all or a portion of the district's matching share required by Section 1859.77.1 or 1859.79.

"Financially Sound" shall have the meaning set forth in Education Code Section 17078.52(d)(4) and Title 4, California Business Regulations commencing with Section 10151, et seq.

"Form SAB 50–01" means the *Enrollment Certification/Projection*, Form SAB 50–01 (Revised 04/07), which is incorporated by reference.

"Form SAB 50–02" means the *Existing School Building Capacity*, Form SAB 50–02 (Revised 09/02), which is incorporated by reference.

"Form SAB 50–03" means the *Eligibility Determination*, Form SAB 50–03 (Revised 09/06), which is incorporated by reference.

"Form SAB 50–04" means the *Application For Funding*, Form SAB 50–04 (Revised 04/08), which is incorporated by reference.

"Form SAB 50–05" means the *Fund Release Authorization*, Form SAB 50–05 (Revised 01/08), which is incorporated by reference.

"Form SAB 50–06" means the *Expenditure Report*, Form SAB 50–06 (Revised 02/07), which is incorporated by reference.

"Form SAB 50–07" means the *Application for Joint–Use Funding*, Form SAB 50–07 (Revised 01/05), which is incorporated by reference.

"Form SAB 50–08" means the *Application for Preliminary Apportionment*, Form SAB 50–08 (Revised 09/04), which is incorporated by reference.

"Form SAB 50–09" means the *Application for Charter School Preliminary Apportionment*, Form SAB 50–09 (Revised 09/06), which is incorporated by reference.

"Form SAB 50–10" means the *Application for Career Technical Education Facilities Funding*, Form SAB 50–10 (Revised 01/08), which is incorporated by reference.

"Form SAB 50–11" means the *Overcrowding Relief Grant District–Wide Eligibility Determination*, Form SAB 50–11, (New 02/07), which is incorporated by reference.

"Fund" shall have the meaning set forth in Education Code Section 17070.15(i).

"General Location" means the proposed location of a new school as set forth in Education Code Section 17078.22 and Section 1859.142.

"General Site Development" means on–site hard surfaced areas for foot traffic, driveways, walks, parking, curbs and gutters; outdoor instructional play facilities such as turfed or paved areas, permanent playground equipment, outdoor places of assembly, tennis/handball courts, running tracks and baseball, football and soccer fields; applicable landscaping of building frontages and outdoor facilities noted above.

"Government Agency" shall include but is not limited to a public entity as defined in Government Code Section 7260(a) including California federally recognized or historically established tribal governments.

"Hazardous Material/Waste Removal Fund" shall mean the fund established pursuant to Section 1859.163.3, in order to set aside funding at the time Preliminary Charter School Apportionments are approved by the Board for hazardous material waste removal that will be provided at the Final Charter School Apportionment when actual costs are known.

"High Performance Rating Criteria" (HPRC) means the standard used to evaluate the costs of designs and materials that promote high performance schools. The HPRC will be using the Collaborative for High Performance Schools (CHPS) rating criteria model as identified in the CHPS *Best Practices Manual Volume III 2002 Edition and 2006 Edition*, as incorporated by reference. For the purposes of the SFP, the HPRC contained in these regulations have been modified to focus on facility related components.

"High Performance School Account" means the funds set aside by the Board for purposes of Education Code Section 101012(a)8.

"High School Attendance Area (HSAA)" means an attendance area that serves a currently operated high school, other than a continuation school or a community school.

"High School District" means a school district that serves any combination of grades seven through twelve exclusively.

"High School Pupil" means a student in a school serving ninth through twelfth grade or any combination of ninth through twelfth grade.

"Higher Education" means an entity that is a public community college; a public college; a public university; or a non–profit/accredited organization of higher education.

"In Escrow, Governmental Entities" means the approval and signature of instrument(s) that will convey a specified school parcel or site from the public/government entity including the federal government for a determinable sum, and for a determinable date of acquisition which may be based on the district's receipt of funding from the State.

"In Escrow, Non–Governmental Entities" means the deposit of signed instrument(s) and/or funds with instructions with a title company or escrow agent to carry out the provisions of an agreement or contract to acquire a specified school parcel or site for a determinable sum, and for a determinable date of acquisition which may be based on the district's receipt of funding from the State.

"Inadequate" means, for purposes of Joint–Use Projects, the square footage of the existing facility is less than 60 percent of the square footage entitlement shown in the Chart in Section 1859.124.1.

"Independent Audit" means an examination and report of the district's accounts by a certified public accounting firm.

"Individual with Exceptional Needs" shall have the meaning set forth in Education Code Section 56026 as further defined and classified in 34 Code of Federal Regulations Part 300.5.

"Instrument" means a written, legally enforceable agreement, approved and signed by all parties to the escrow, for the conveyance to the district of real estate for a specified parcel or site, that includes a compensation clause and either a purchase option agreement, a purchase agreement, promissory note, lease agreement, installment sales contract, gift, or other real estate conveyance valid in the State of California for property conveyed from a public/government entity, including the federal government.

"Interim Housing" means the rental or lease of classrooms used to house pupils temporarily displaced as a result of the modernization of classroom facilities.

"Joint–Use Project" means a project approved by the Board pursuant to Education Code Sections 17050, 17051, or 17077.40.

"Joint–Use Partner(s)" means an entity or entities that has entered into a joint–use agreement pursuant to the provisions of Education Code Section 17077.42.

"Labor Compliance Program (LCP)" shall be as described in subdivision (b) of Labor Code Section 1771.5 and approved by the Department of Industrial Relations.

"Large Charter School" shall be defined as a school in which the enrollment is greater than 351 pupils, based on the latest available CBEDS report or if a CBEDS report is unavailable, the registration list for the Charter School may be used.

"Lease–Purchase Program (LPP)" means the Leroy F. Greene State School Building Lease–Purchase Law of 1976, commencing with Education Code Section 17000.

"Low–income" shall be the percentage of pupils deemed eligible for free/reduced lunch as identified in the most recent Free and Reduced Price Meals data on file at the CDE. The data on file with CDE shall be determined to be the information collected for the month of October, and any errors and omissions amendments to that information for that time period that have been received and approved by the CDE.

"Major Maintenance" shall have the meaning set forth in Education Code Section 17070.77(b).

"Material Inaccuracy" means any falsely certified eligibility or funding application related information submitted by school districts, architects or other design professionals that allowed the school district an advantage in the funding process.

"Median Cost" means, for purposes of a Preliminary Apportionment, the middle number in a given sequence of property value numbers, or the average of the middle two property value numbers when the given sequence of property value numbers has an even number of numbers.

"Medium Charter School" shall be defined as a school with an enrollment of 176 pupils to 350 pupils, based on the latest available CBEDS report or if a CBEDS report is unavailable, the registration list for the Charter School may be used.

"Mello–Roos Bonds" means the bonds that are authorized under the provisions of the Mello–Roos Community Facilities Act of 1982, commencing with Government Code Section 53311.

"Middle School Pupil" means a student in a school serving sixth through eighth grade, or seventh and eighth grades.

"Modernization" shall have the meaning set forth in Education Code Section 17070.15(f) for purposes of projects subject to Subgroup 5.5, Article 2, commencing with Section 1859 or Education Code Section 17021 under the Lease–Purchase Program.

"Modernization Adjusted Grant" means the Modernization Grant, plus any other funding provided by these Regulations.

"Modernization Grant" means the funding provided pursuant to Education Code Section 17074.10(a) and Sections 1859.78, 1859.78.3, 1859.78.6, and 1859.78.8.

"Modernization Eligibility" means the result of the calculation contained in either Option A or B of the Form SAB 50–03.

"Most Vulnerable Category 2 Buildings," as defined by the DSA, means the building is located where the short period spectral acceleration is 1.70 g or more based on the 2002 United States Geological Survey National Seismic Hazard Maps adjusted for site class factors; the building is designed for occupancy by students and staff; the building type is either C1 — Concrete Moment Frame, PC1A — Precast/Tilt-up Concrete Shear Wall with Flexible Roof, PC2 — Precast Concrete Frame and Roofs with Concrete Shear Walls, or URM — Unreinforced Masonry Bearing Wall Buildings; and a structural report is provided by a structural engineer that demonstrates the lateral force–resisting system of the building does not meet collapse prevention performance objectives and the specific deficiencies and reasoning for concluding that the building has a potential for catastrophic collapse.

"Multi–Track Year–Round Education (MTYRE)" means a school education program in which the students are divided into three or more groups on alternating tracks, with at least one group out of session, and the other groups in session during the same period.

"New Construction Adjusted Grant" means the New Construction Grant, plus any other funding provided by these Regulations.

"Net School Building Capacity" means the capacity of a school building to house pupils after excluding the pupils housed in a Classroom which was demolished and replaced in the project and, for schools operating on a multi–track year–round education calendar as defined in Education Code Section 42260(d)(1), after including the maximum enrollment attending the school at one time.

"New Construction Eligibility" means the result of the calculation determined in Education Code Section 17071.75.

"New Construction Grant" means the funding provided pursuant to Education Code Section 17072.10(a) and Sections 1859.71 and 1859.71.1.

"Nonclassroom–Based Instruction" shall have the meaning set forth in Education Code Section 47612.5 (d)(1) and (e)(2).

"Non–Profit Entity" means an entity that is organized and operated for purposes of not making a profit under the provisions of the federal Internal Revenue Code Section 501(c)(3), or is organized as/operated by a nonprofit public benefit corporation, pursuant to State Corporations Code, Title 1, Division 2, Part 2, Section 5110, et seq.

"Non–Profit Organization" means an entity that is organized and operated for purposes of not making a profit under the provisions of the Revenue and Taxation Code.

"Non–Severely Disabled Individual with Exceptional Needs" means an individual with exceptional needs not defined in Education Code Section 56030.5 but included in 34 Code of Federal Regulations Part 300.5.

"Occupancy" means the point at which pupils occupy a classroom as evident by district documents such as the school board's adopted calendar, classroom attendance rosters, fire marshal approval of the classroom, etc.

"Office of Public School Construction (OPSC)" means the State office within the Department of General Services that assists the Board as necessary and administers the Act on behalf of the Director.

"Overcrowded School District" for purposes of determining preference points is any district that demonstrates eligibility in excess of two percent of their unhoused pupils.

"Overcrowding Relief Grant" (ORG) means the funding provided pursuant to Education Code Section 17079, et seq.

"Overcrowding Relief Grant Eligibility Determination" means the form that is submitted to the California Department of Education for purposes of determining whether a school site is eligible for Overcrowding Relief Grant funding and the maximum number of pupils that are eligible to receive funding at a school site.

"Overcrowding Relief Grant Pupil Eligibility" means the result of the calculation determined in Section 1859.182(a).

"Permanent Area" means any area not included in a portable classroom.

"Permanent Classroom" means any classroom not meeting the definition of portable classroom.

"Phase C Approval" means the construction approval by the Board under the Lease–Purchase Program.

"Phase One Environmental Site Assessment (POESA)" shall have the meaning set forth in Education Code Section 17210(g).

"Phase P Approval" means the planning approval by the Board under the Lease–Purchase Program.

"Phase S Approval" means the site approval by the Board under the Lease–Purchase Program.

"Piggyback Contract" means a contract for acquisition of personal property, without advertising for bids, as authorized by Public Contract Code Section 20118.

"Portable Classroom" shall have the meaning set forth in Education Code Section 17070.15(k).

"Preliminary Application" means the district has submitted Form SAB 50–08, including all documents that are required to be submitted with the application as identified in the General Instructions Section of that Form to the OPSC and the OPSC has accepted the application for processing.

"Preliminary Apportionment" means an apportionment made pursuant to Education Code Section 17078.10(c).

"Preliminary Charter School Application" means a district filing on behalf of a charter school or the charter school submitting directly on Form SAB 50–09, including all supporting documents as identified in the General Instructions Section of that Form submitted to the OPSC and the OPSC has accepted the application for processing.

"Preliminary Charter School Apportionment" means an apportionment made pursuant to Education Code Section 17078.52(d)(3).

"Preliminary Endangerment Assessment (PEA)" shall have the meaning set forth in Education Code Section 17210(h).

"Preliminary Plans" means a set of architectural drawings not approved by the DSA that provide a preliminary design.

"Priority One" shall have the meaning set forth in Education Code Section 17017.7(a)(1).

"Priority Two" shall have the meaning set forth in Education Code Section 17017.7(a)(2).

"Property" shall have the meaning set forth in Education Code Section 17070.15(g).

"Proposition 1A" means the Initiative Measure (Prop. 1A) enacted by passage at the November 4, 1998 general election.

"Proposition 39" means the Initiative Measure (Prop. 39) enacted by passage at the November 7, 2000 general election which amended Sections 15102, 15106, 35233, and 72533 and added Chapter 1.5 (commencing with Section 15264) to Part 10, of the Eduction Code, and added applicable sections of the California Constitution relating to passage of

local school bonds with a 55 percent vote of the electorate at a primary or general election, a regularly scheduled local election, or a statewide special election.

"Proposition 47" means the Kindergarten–University Public Education Facilities Bond Act of 2002.

"Proposition 55" means the Kindergarten–University Public Education Facilities Bond Act of 2004.

"Pupil" means a student enrolled in any grade Kindergarten through grade twelve.

"Qualifying Pupils" means enrollment in excess of 86 pupils per useable acre for Kindergarten through sixth grade or 68 pupils per useable acre for grades seven through twelve.

"Quarterly Basis" means a three–month period commencing on January 1, April 1, July 1 and October 1 of each calendar year.

"Ready for Apportionment" means a final review of an Approved Application has been completed by the OPSC and it has been determined that it meets all requirements of law for an apportionment or eligibility determination, and the OPSC will recommend approval to the Board.

"Reconfiguration" for the purposes of the Small High School Program means a project to create new Small High Schools, on an existing high school which can include limited new construction, as needed, pursuant to Education Code Section 17074.32, and the work shall be part of a current Modernization project and considered one project regardless of the number of new high school entities created.

"Reconfigure" for the purposes of the Career Technical Education Facilities Program means remodeling an existing school building within its current confines and/or the expansion of the square footage of the existing building.

"Reconfigure" for the purposes of the Joint–Use program means remodeling an existing school building within its current confines and/or the expansion of the square footage of the existing building and any necessary replacement of displaced classrooms or other minimum essential facilities.

"Region One" shall consist of the following counties: Alpine, Amador, Butte, Colusa, Contra Costa, Del Norte, El Dorado, Glenn, Humboldt, Lake, Lassen, Marin, Mendocino, Modoc, Napa, Nevada, Placer, Plumas, Sacramento, San Joaquin, Shasta, Sierra, Siskiyou, Solano, Sonoma, Sutter, Tehama, Trinity, Yolo, and Yuba.

"Region Two" shall consist of the following counties: Alameda, Calaveras, Fresno, Inyo, Kern, Kings, Madera, Mariposa, Merced, Mono, Monterey, San Benito, San Francisco, San Mateo, Santa Clara, Santa Cruz, Stanislaus, Tulare, and Tuolumne.

"Region Three" shall consist of the following counties: Los Angeles, San Bernardino, San Luis Obispo, Santa Barbara, and Ventura.

"Region Four" shall consist of the following counties: Imperial, Orange, Riverside, and San Diego.

"Rehabilitation Cost" means health and safety mitigation cost that is less than 50 percent of the current replacement cost of the facility.

"Relocation/DTSC Fee Fund" shall mean the fund established pursuant to Section 1859.163.3, in order to set aside funding at the time Preliminary Charter School Apportionments are approved by the Board for relocation expenses and/or DTSC fees that will be provided at the Final Charter School Apportionment when actual costs are known.

"Remedial Action Plan (RAP)" means a plan approved by the Department of Toxic Substances Control (DTSC) pursuant to Health and Safety Code Section 25356.1.

"Resource Specialist Program" means pupils that meet the definition of Non–Severely Disabled Individual with Exceptional Needs as defined in Section 1859.2 that are not enrolled in a special day class.

"Response Action (RA)" means the removal of hazardous materials and solid waste, the removal of hazardous substances, and other remedial actions in connection with hazardous substances at the site.

"Restricted Charter School Fund" means the funds in the 2002 (or 2004, as appropriate) Charter School Facility Account approved for a Preliminary Charter School Apportionment.

"Restricted Fund" means the funds in the 2002 (or 2004, as appropriate) Critically Overcrowded School Facilities Account approved for a Preliminary Apportionment(s).

"Rural Area" shall be a school with a locale code of 41, 42 or 43 as classified by the National Center for Education Statistics (NCES).

"School Building Capacity" shall have the meaning set forth in Education Code Section 17070.15(l).

"School District" shall have the meaning set forth in Education Code Sections 17070.15(m) and 17073.25.

"School Facilities Improvement District" means a legal entity authorized by Education Code Section 15300, to generate school facilities funding.

"School Facility Program (SFP)" means either the new construction or modernization programs implemented under the Act, by these Subgroup 5.5 regulations.

"SFP New Construction Account" means the fund for new construction projects authorized by Sections 100620(a)(1) and 100820(a)(1).

"Secondary School Pupil" means a student in the seventh through the twelfth grade.

"Section" means a section in these Subgroup 5.5 regulations.

"Service Region" means one of the eleven service regions of the California County Superintendents Educational Services Association.

"Severely Disabled Individual with Exceptional Needs" means an individual with exceptional needs as defined in Education Code Section 56030.5.

"Small Charter School" shall be defined as a school with an enrollment of not more than 175 pupils, based on the latest available CBEDS report or if a CBEDS report is unavailable, the registration list for the Charter School may be used.

"Small High School" for purposes of the Small High School Program means a high school with an enrollment of 500 pupils or less.

"Small High School Program" means an Approved Application submitted pursuant to Education Code Section 17072.10(c) or 17074.32.

"Small School District" means a school district with districtwide enrollment reported in Part A, the continuation high pupils reported in Part B, and the special day class pupils reported in Part C on the latest Form SAB 50–01, used to determine or adjust the district's baseline eligibility pursuant to Sections 1859.50 and 1859.51 or submitted separately to the OPSC, that is 2,5000 or less.

"Source School" means a Critically Overcrowded School included on the CDE Source School List that has Qualifying Pupils.

"Special Day Class" means a class that has pupils enrolled that are individuals with exceptional needs.

"Square Footage" means the enclosed area measured from the outside face of exterior structural walls of the building. For interior areas or portions of building areas, the enclosed area shall be measured from the centerline of the interior demising wall.

"Student Yield Factor" means the number of students each dwelling unit will generate for purposes of an enrollment augmentation.

"Substantial Enrollment Requirement (SER)" means a district that is operating on a Multi–Track Year– Round Education basis pursuant to Education Code Sections 17017.6 and 17017.7(c).

"Suburban Area" shall be a school with a locale code of either 21, 22, 23, 31, 32 or 33 as classified by the NCES.

"Super High School Attendance Area (Super HSAA)" means two or more HSAAs that are adjacent to each other.

"Teacher Education" means courses for credential programs or enhancement courses that are professional growth courses for elementary, secondary, higher education and special education instructors.

"Toilet Facilities" means restroom area, shower/locker area or physical therapy area for Individuals with Exceptional Needs.

"Type I Joint–Use Project" means a project that meets the criteria of Education Code Section 17077.40(b)(1).

"Type II Joint–Use Project" means a project that meets the criteria of Education Code Section 17077.40(b)(2).

"Unfunded List" means an information list of unfunded projects.

"Unrestricted Charter School Fund" means the funds in the appropriate Charter School Facility Account not approved for a Preliminary Charter School Apportionment(s).

"Unrestricted Fund" means the funds in the 2002 (or 2004, as appropriate) Critically Overcrowded School Facilities Account not approved for a Preliminary Apportionment(s).

"Urban Area" shall be as a school with a locale code of 11, 12 or 13 as classified by the NCES.

"Useable Acres" means the gross acreage of a school site less any portion of the site publicly dedicated for off-site street improvements and any portion of the site not available for school purposes as determined by the CDE because of topological impediments or because of other unique circumstances.

NOTE: Authority cited: Sections 17070.35 and 17078.64, Education Code. Reference: Sections 17009.5, 17017.6, 17017.7, 17021, 17047, 17050, 17051, 17070.15, 17070.51(a) 17070.71, 17070.77, 17071.10, 17071.25, 17071.30, 17071.33, 17071.35, 17071.40, 17071.75, 17071.76, 17072.10, 17072.12, 17072.18, 17072.33, 17073.25, 17074.10, 17074.30, 17075.10, 17075.15, 17077.40, 17077.42, 17077.45, 17078.52, 17078.56, 17078.72(k), 17079, 17079.10, 17280, 56026 and 101012(a)(8), Education Code; Section 53311, Government Code; and Section 1771.5, Labor Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. Amendment filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
6. Amendment of definition "Modernization Eligibility" filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
8. Amendment filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
9. Editorial correction adding definition of "Unfunded List" (Register 2001, No. 6).
10. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
11. Amendment of definition "Approved Applications," new definitions "Governmental Agency," "In Escrow, Governmental Agencies," "In Escrow, Non-Governmental Agencies" and "Instrument" and amendment of NOTE filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).
12. Amendment of definition of "Approved Application(s)" filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).
13. New definition of "Proposition 39" filed 12-21-2001; operative 12-21-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 51).
14. Amendment of section and NOTE filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).
15. Amendment of definition of "Approved Applications," new definitions of "Major Maintenance" and "Material Inaccuracy" and amendment of NOTE filed 5-2-2002; operative 6-1-2002 (Register 2002, No. 18).
16. Amendment of section and NOTE filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.
17. Amendment of definitions of "Approved Application(s)" and "Form SAB 50-04" and new definition of "General Site Development" filed 2-6-2003; operative 2-6-2003 pursuant to Government Code section 11343.4 (Register 2003, No. 6).
18. Amendment of section and NOTE filed 2-13-2003 as an emergency pursuant to Education Code section 17078.64(b); operative 2-13-2003 (Register 2003, No. 7). A Certificate of Compliance must be transmitted to OAL by 6-13-2003 or emergency language will be repealed by operation of law on the following day.
19. Amendment of definitions of "Approved Application(s)," "Approved Application for Joint-Use Funding," "Form SAB 50-03," "Form SAB 50-04," "Form SAB 50-05," "Form SAB 50-07," "Form SAB 50-08" and "School District," new definition of "Net School Building Capacity" and amendment of NOTE filed 2-27-2003 as an emergency; operative 2-27-2003 (Register 2003, No. 9). A Certificate of Compliance must be transmitted to OAL by 6-27-2003 or emergency language will be repealed by operation of law on the following day.
20. Amendment of section and NOTE refiled 6-13-2003 as an emergency; operative 6-13-2003 (Register 2003, No. 24). A Certificate of Compliance must be transmitted to OAL by 10-13-2003 or emergency language will be repealed by operation of law on the following day.
21. Amendment of definitions of "Approved Application(s)," "Approved Application for Joint-Use Funding," "Form SAB 50-03," "Form SAB 50-04," Form SAB 50-05," "Form SAB 50-07," "Form SAB 50-08" and "School District," new definition of "Net School Building Capacity" and amendment of NOTE refiled 6-19-2003 as an emergency; operative 6-19-2003 (Register 2003, No. 25). A Certificate of Compliance must be transmitted to OAL by 10-17-2003 or emergency language will be repealed by operation of law on the following day.
22. Amendment of definition of "Form SAB 50-04" filed 7-7-2003 as an emergency; operative 7-7-2003 (Register 2003, No. 28). A Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.
23. Amendment of definitions of "Approved Applications," "Approved Application for Joint-Use Funding," "Form SAB 50-04," "Form SAB 50-05," and "Form SAB 50-07," new definition of "Labor Compliance Program" and amendment of NOTE filed 8-25-2003 as an emergency; operative 8-25-2003 (Register 2003, No. 35). A Certificate of Compliance must be transmitted to OAL by 12-23-2003 or emergency language will be repealed by operation of law on the following day.
24. Amendment of section and NOTE refiled 10-9-2003 as an emergency; operative 10-9-2003 (Register 2003, No. 41). A Certificate of Compliance must be transmitted to OAL by 2-6-2004 or emergency language will be repealed by operation of law on the following day.
25. Amendment of definitions of "Approved Application(s)," "Approved Application for Joint-Use Funding," "Form SAB 50-03," "Form SAB 50-04," Form SAB 50-05," "Form SAB 50-07," "Form SAB 50-08" and "School District," new definition of "Net School Building Capacity" and amendment of NOTE refiled 10-10-2003 as an emergency; operative 10-10-2003 (Register 2003, No. 41). A Certificate of Compliance must be transmitted to OAL by 2-9-2004 or emergency language will be repealed by operation of law on the following day.
26. Amendment of definition of "Form SAB 50-04" refiled 11-3-2003 as an emergency; operative 11-3-2003 (Register 2003, No. 45). A Certificate of Compliance must be transmitted to OAL by 3-2-2004 or emergency language will be repealed by operation of law on the following day.
27. Certificate of Compliance as to 11-4-2002 order transmitted to OAL 11-4-2003 and filed 12-19-2003 (Register 2003, No. 51).
28. Reinstatement of section as it existed prior to 8-25-2003 emergency amendment by operation of Government Code section 11346.1(f) (Register 2004, No. 9).
29. Amendment of definition of "Form SAB 50-04" refiled 3-2-2004 as an emergency; operative 3-2-2004 (Register 2004, No. 10). A Certificate of Compliance must be transmitted to OAL by 6-30-2004 or emergency language will be repealed by operation of law on the following day.
30. Certificate of Compliance as to 10-9-2003 order, including further amendment of section, transmitted to OAL 2-6-2004 and filed 3-23-2004 (Register 2004, No. 13).
31. Certificate of Compliance as to 10-10-2003 order transmitted to OAL 2-9-2004 and filed 3-23-2004 (Register 2004, No. 13).
32. Amendment of definitions of "Approved Application for Joint-Use Funding" and "Form SAB 50-07," new definition of "Reconfigure" and repealer of definition of "Type III Joint-Use Project" filed 5-21-2004 as an emergency; operative 5-21-2004 (Register 2004, No. 21). A Certificate of Compliance must be transmitted to OAL by 9-20-2004 or emergency language will be repealed by operation of law on the following day.
33. New definitions of "Charter School Facility Account," "Hazardous Material/Waste Removal Fund," "Relocation/DTSC Fee Fund," "Restricted Charter School Fund" and "Unrestricted Charter School Fund" and amended definitions of "Financially Sound," "Form SAB 50-05," "Form SAB 50-09," "Large Charter School," "Low-income," "Medium Charter School," "Region Two," "Region Three" and "Small Charter School" filed 6-1-2004 as an emergency; operative 6-1-2004 (Register 2004, No. 23). A Certificate of Compliance must be transmitted to OAL by 9-29-2004 or emergency language will be repealed by operation of law on the following day.
34. Amendment of definition of "Form SAB 50-08" filed 7-2-2004; operative 7-2-2004 pursuant to Government Code section 11343.4 (Register 2004, No. 27).
35. Amendment of definition of "Form SAB 50-04," new definition of "Occupancy" and amendment of NOTE filed 7-22-2004 as an emergency; operative 7-22-2004 (Register 2004, No. 30). A Certificate of Compliance must be trans-

mitted to OAL by 11–19–2004 or emergency language will be repealed by operation of law on the following day.

36. Certificate of Compliance as to 3–2–2004 order transmitted to OAL 6–28–2004 and filed 8–9–2004 (Register 2004, No. 33).
37. Certificate of Compliance as to 5–21–2004 order transmitted to OAL 9–20–2004 and filed 11–2–2004 (Register 2004, No. 45).
38. Certificate of Compliance as to 6–1–2004 order transmitted to OAL 9–29–2004 and filed 11–10–2004 (Register 2004, No. 46).
39. Amendment of definitions of "Approved Applications" and "Form SAB 50–04" and amendment of NOTE filed 12–6–2004; operative 12–6–2004 pursuant to Government Code section 11343.4 (Register 2004, No. 50).
40. Certificate of Compliance as to 7–22–2004 order transmitted to OAL 11–12–2004 and filed 12–16–2004 (Register 2004, No. 51).
41. Amendment of definitions of "Approved Applications," "Approved Application for Joint–Use Funding," "Form SAB 50–04," "Form SAB 50–05," "Form SAB 50–07," "Form SAB 50–08" and "Form SAB 50–09," new definition of "Labor Compliance Program" and amendment of NOTE filed 12–20–2004 as an emergency; operative 12–20–2004 (Register 2004, No. 52). A Certificate of Compliance must be transmitted to OAL by 4–19–2005 or emergency language will be repealed by operation of law on the following day.
42. New definition of "Alternative Education" and amendment of definitions of "Approved Application(s)," "Form SAB 50–04" and "Form SAB 50–05" filed 1–31–2005; operative 1–31–2005 pursuant to Government Code section 11343.4 (Register 2005, No. 5).
43. Amendment of definitions of "Approved Application(s)," "Form SAB 50–03," "Form SAB 50–04" and "Modernization Grant" filed 2–3–2005; operative 2–3–2005 pursuant to Government Code section 11343.4 (Register 2005, No. 6).
44. Amendment of definition of "Form SAB 50–05" filed 2–23–2005; operative 2–23–2005 pursuant to Government Code section 11343.4 (Register 2005, No. 8).
45. Amendment of definition of "Class B Construction Cost Index" filed 2–28–2005 as an emergency; operative 2–28–2005 (Register 2005, No. 9). A Certificate of Compliance must be transmitted to OAL by 6–28–2005 or emergency language will be repealed by operation of law on the following day.
46. Amendment of definitions of "Approved Application(s)" and "Form SAB 50–01" and new definition of "Date of Occupancy" filed 4–26–2005; operative 4–26–2005 pursuant to Government Code section 11343.4 (Register 2005, No. 17).
47. Certificate of Compliance as to 12–20–2004 order transmitted to OAL 4–19–2005 and filed 5–12–2005 (Register 2005, No. 19).
48. New definition of "Existing School Site" filed 5–24–2005 as an emergency; operative 5–24–2005 (Register 2005, No. 21). A Certificate of Compliance must be transmitted to OAL by 9–21–2005 or emergency language will be repealed by operation of law on the following day.
49. Editorial correction of definition of "Alternative Education" (Register 2005, No. 21).
50. Amendment of definitions of "Approved Applications," "Approved Application for Joint–Use Funding," "Form SAB 50–04," "Form SAB 50–07" and "Form SAB 50–09" filed 5–26–2005 as an emergency; operative 5–26–2005 (Register 2005, No. 21). A Certificate of Compliance must be transmitted to OAL by 9–23–2005 or emergency language will be repealed by operation of law on the following day.
51. Certificate of Compliance as to 2–28–2005 order transmitted to OAL 5–11–2005 and filed 5–27–2005 (Register 2005, No. 21).
52. Certificate of Compliance as to 5–24–2005 order transmitted to OAL 9–16–2005 and filed 10–24–2005 (Register 2005, No. 43).
53. Amendment of definitions of "Approved Application(s)" and "Form SAB 50–01" filed 10–27–2005; operative 10–27–2005 pursuant to Government Code section 11343.4 (Register 2005, No. 43).
54. Certificate of Compliance as to 5–26–2005 order transmitted to OAL 9–19–2005 and filed 10–31–2005 (Register 2005, No. 44).
55. Amendment of definitions of "Approved Application(s)" and "Form SAB 50–04," new definitions of "Reconfiguration," "Small High School" and "Small High School Program" and amendment of NOTE filed 3–14–2006; operative 3–14–2006 pursuant to Government Code section 11343.4 (Register 2006, No. 11).
56. New definitions of "Alternative Enrollment Projection" and "Demographic Research Unit" and amendment of definitions of "Approved Application(s)" and "Form SAB 50–04" filed 5–15–2006 as an emergency; operative 5–15–2006 (Register 2006, No. 20). A Certificate of Compliance must be transmitted to OAL by 9–12–2006 or emergency language will be repealed by operation of law on the following day.
57. Certificate of Compliance as to 5–15–2006 order transmitted to OAL 7–19–2006 and filed 8–11–2006 (Register 2006, No. 32).
58. Repealer of definition of "CEC," amendment of definition of "EnergyPro 3.1" and new definition of "Proposition 55" filed 8–21–2006 as an emergency; operative 8–21–2006 (Register 2006, No. 34). A Certificate of Compliance must be transmitted to OAL by 12–19–2006 or emergency language will be repealed by operation of law on the following day.
59. Amendment of definitions of "Form SAB 50–04" and "Form SAB 50–09" filed 9–5–2006 as an emergency; operative 9–5–2006 (Register 2006, No. 36). A Certificate of Compliance must be transmitted to OAL by 1–3–2007 or emergency language will be repealed by operation of law on the following day.
60. Certificate of Compliance as to 8–21–2006 order transmitted to OAL 11–9–2006 and filed 12–18–2006 (Register 2006, No. 51).
61. Certificate of Compliance as to 9–5–2006 order, including further amendment of definition of "Form SAB 50–04," amendment of "Form SAB 50–05" and new definition of "Piggyback Contract," transmitted to OAL 1–3–2007 and filed 2–16–2007 (Register 2007, No. 7).
62. New definitions of "Charter School Agreements," "Charter School Facilities Program Rehabilitation" and "High Performance School Account," amendment of definitions of "Charter School Facility Account," "Charter School General Location," "Form SAB 50–04," "Form SAB 50–06," "Form SAB 50–09," "Low–income," "Rural Area," "Suburban Area," "Unrestricted Charter School Fund" and "Urban Area" and amendment of NOTE filed 5–17–2007; operative 5–17–2007 pursuant to Government Code section 11343.4 (Register 2007, No. 20).
63. Editorial correction of HISTORY 61 (Register 2007, No. 28).
64. New definitions of "Approved Application for Career Technical Education Facilities Project Funding," "Career Technical Education Facilities Project," "Reconfigure," "Service Region" and "Form SAB 50–10," amendment of definitions of "Form SAB 50–04" and "Form 50–05" and repealer of definitions of "Comprehensive High School," "Large New Construction Project" and "Large Modernization Project" filed 7–13–2007 as an emergency; operative 7–13–2007 (Register 2007, No. 28). Pursuant to Education Code section 17078.72(k) a Certificate of Compliance must be transmitted to OAL by 7–14–2008 or emergency language will be repealed by operation of law on the following day.
65. Change without regulatory effect amending definitions of "Form SAB 50–04" and "Form SAB 50–05" filed 7–17–2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 29).
66. Amendment of definitions of "Approved Application(s)," "Form SAB 50–03," "Form SAB 50–04" and "Form SAB 50–05" filed 7–18–2007; operative 7–18–2007 pursuant to Government Code section 11343.4 (Register 2007, No. 29).
67. Amendment of definitions of "Form SAB 50–04" and "Form SAB 50–06," new definitions of "Form SAB 50–11," "Overcrowding Relief Grant," "Overcrowding Relief Grant Eligibility Determination" and "Overcrowding Relief Grant Pupil Eligibility" and amendment of definition of "School District" and of NOTE filed 8–31–2007; operative 8–31–2007 pursuant to Government Code section 11343.4 (Register 2007, No. 35).
68. New definition of "High Performance Rating Criteria" filed 10–1–2007; operative 10–1–2007 pursuant to Government Code section 11343.4 (Register 2007, No. 40).
69. Amendment of definition of "Charter School Facility Account" and new definition of "Conversion Increase Fund" filed 10–3–2007; operative 10–3–2007 pursuant to Government Code section 11343.4 (Register 2007, No. 40).
70. Editorial correction of HISTORY 64 (Register 2007, No. 52).
71. Amendment of definition of "Form SAB 50–01" filed 1–7–2008; operative 2–6–2008 (Register 2008, No. 2).
72. Certificate of Compliance as to 7–13–2007 order, including further amendment of definitions of "Form SAB 50–04," "Form SAB 50–05" and "Form SAB 50–10," transmitted to OAL 3–18–2008 and filed 4–29–2008 (Register 2008, No. 18).
73. Amendment of definitions of "Approved Application(s)" and "Form SAB 50–04," new definition of "Most Vulnerable Category 2 Buildings" and amendment of NOTE filed 4–30–2008; operative 4–30–2008 pursuant to Government Code section 11343.4 (Register 2008, No. 18).

Article 2. Program Transition

§ 1859.10. Lease–Purchase Program and School Facility Program.

Projects approved under the LPP are subject to the regulations contained in Title 2, California Code of Regulations, commencing with Section 1865.1, and the SFP transition rules contained in this Article 2.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17009.5, Education Code.

HISTORY

1. New article 2 (sections 1859.10–1859.16) and section filed 12–3–98 as an emergency; operative 12–3–98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4–2–99 or emergency language will be repealed by operation of law on the following day.
2. New article 2 (sections 1859.10–1859.16) and section refiled 3–31–99 as an emergency; operative 3–31–99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7–29–99 or emergency language will be repealed by operation of law on the following day.
3. New article 2 (sections 1859.10–1859.16) and section refiled 7–29–99 as an emergency; operative 7–29–99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11–26–99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7–29–99 order transmitted to OAL 8–26–99 and filed 10–8–99 (Register 99, No. 41).

§ 1859.11. Previously Approved Joint Use Projects.

Joint Use projects that were approved by the Board prior to November 4, 1998, shall be eligible for funding pursuant to the LPP for all remaining approved but unfunded project costs.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17009.5, Education Code.

HISTORY

1. New section filed 12–3–98 as an emergency; operative 12–3–98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4–2–99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3–31–99 as an emergency; operative 3–31–99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7–29–99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7–29–99 as an emergency; operative 7–29–99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11–26–99

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or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7–29–99 order transmitted to OAL 8–26–99 and filed 10–8–99 (Register 99, No. 41).

§ 1859.12. Priority One New Construction.

Priority One new construction projects will be funded under the provisions of the LPP if the project received either: 1) Phase C approval by the Board prior to November 4, 1998; or 2) either Phase P or Phase P and Phase S, approvals, and DSA plan approval prior to November 4, 1998.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17009.5, Education Code.

HISTORY

1. New section filed 12–3–98 as an emergency; operative 12–3–98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4–2–99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3–31–99 as an emergency; operative 3–31–99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7–29–99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7–29–99 as an emergency; operative 7–29–99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11–26–99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7–29–99 order transmitted to OAL 8–26–99 and filed 10–8–99 (Register 99, No. 41).

§ 1859.13. Priority Two New Construction.

Districts with Priority Two new construction projects which received either: 1) Phase C approval by the Board prior to November 4, 1998; or 2) either a Phase P or a Phase P and Phase S approval with DSA plan approval prior to November 4, 1998, must declare to the Board that it intends to convert the entire project to Priority One status by January 31, 1999 to receive funding for all remaining costs in accordance with the LPP provisions.

If the district has not declared its intention to convert the entire project to Priority One status by January 31, 1999, the project shall be deemed withdrawn under the provisions of the LPP and the district must submit a new application under the provisions of the SFP, pursuant to Section 1859.20. If the project is eligible for further funding under the SFP, the New Construction Adjusted Grant provided under the SFP will be reduced by any previous apportionments, with the exception of apportionments made for site acquisition, made under the LPP.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17009.5, Education Code.

HISTORY

1. New section filed 12–3–98 as an emergency; operative 12–3–98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4–2–99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3–31–99 as an emergency; operative 3–31–99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7–29–99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7–29–99 as an emergency; operative 7–29–99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11–26–99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7–29–99 order transmitted to OAL 8–26–99 and filed 10–8–99 (Register 99, No. 41).
5. Amendment of second paragraph filed 6–26–2000; operative 6–26–2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

§ 1859.14. Priority One Modernization.

Priority One modernization projects that have either Phase C approval by the Board prior to November 4, 1998, or have Phase P approval by the Board and DSA plan approval prior to November 4, 1998, may proceed under either (a) or (b). Districts may either:

(a) Receive funding under the provisions of the LPP; or,

(b) By January 31, 1999, withdraw the Priority One modernization LPP project and submit a new application for funding under the provisions of the SFP, pursuant to Section 1859.20. The project approval date under the LPP will be retained for the project approval date under the SFP. If the project is eligible for further funding under the SFP, the Modernization Adjusted Grant provided under the SFP will be reduced by any previous apportionments made under the LPP.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17009.5, Education Code.

HISTORY

1. New section filed 12–3–98 as an emergency; operative 12–3–98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4–2–99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3–31–99 as an emergency; operative 3–31–99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7–29–99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7–29–99 as an emergency; operative 7–29–99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11–26–99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7–29–99 order transmitted to OAL 8–26–99 and filed 10–8–99 (Register 99, No. 41).
5. Amendment of subsection (b) filed 6–26–2000; operative 6–26–2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

§ 1859.15. Priority Two Modernization.

Districts with Priority Two modernization projects that have either Phase C approval by the Board prior to November 4, 1998, or have Phase P approval by the Board and DSA plan approval prior to November 4, 1998, must declare to the Board that it intends to convert the entire project to Priority One status by January 31, 1999 to receive funding for all remaining costs in accordance with the LPP provisions.

If the district has not declared its intention to convert the entire project to Priority One status by January 31, 1999, the project shall be deemed withdrawn under the provisions of the LPP and the district must submit a new application under the provisions of the SFP pursuant to Section 1859.20. The project approval date under the LPP will be retained for the project approval date under the SFP. If the project is eligible for further funding under the SFP, the Modernization Adjusted Grant provided under the SFP will be reduced by any previous apportionments made under the LPP.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17009.5, Education Code.

HISTORY

1. New section filed 12–3–98 as an emergency; operative 12–3–98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4–2–99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3–31–99 as an emergency; operative 3–31–99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7–29–99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7–29–99 as an emergency; operative 7–29–99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11–26–99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7–29–99 order transmitted to OAL 8–26–99 and filed 10–8–99 (Register 99, No. 41).

§ 1859.15.1. Application Deadline.

Districts with LPP or SFP conversions from LPP new construction and modernization projects that meet the provisions of Sections 1859.12, 1859.13, 1859.14 or 1859.15 shall receive first funding priority upon submittal of a complete eligibility and funding application through July 5, 1999. After this date, LPP or SFP conversions from LPP new construction and modernization projects shall be funded in the order of the date of receipt of a complete application which complies with all pertinent LPP and SFP statutes and regulations.

NOTE: Authority cited: Section 17070.35, Education Code; and Section 15503, Government Code. Reference: Sections 17009.3 and 17009.5, Education Code.

HISTORY

1. New section filed 6–14–99 as an emergency; operative 6–14–99 (Register 99, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–12–99 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 6–14–99 order transmitted to OAL 8–31–99 and filed 10–13–99 (Register 99, No. 42).

§ 1859.16. Projects Not Eligible for Further LPP Funding.

A district with projects not meeting the requirements of Sections 1859.11, 1859.12, 1859.13, 1859.14 and 1859.15 must submit a new application under the provisions of the SFP pursuant to Section 1859.20 in order to receive funding. If the project is eligible for further funding under the SFP, the:

(a) New Construction Adjusted Grant provided under the SFP will be reduced by any previous apportionments, with the exception of apportionments made for site acquisition, made under the LPP.

(b) Modernization Adjusted Grant provided under the SFP will be reduced by any previous apportionments made under the LPP.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17009.5, Education Code.

HISTORY

1. New section filed 12–3–98 as an emergency; operative 12–3–98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4–2–99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3–31–99 as an emergency; operative 3–31–99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7–29–99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7–29–99 as an emergency; operative 7–29–99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11–26–99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7–29–99 order transmitted to OAL 8–26–99 and filed 10–8–99 (Register 99, No. 41).
5. Amendment of first paragraph and new subsections (a) and (b) filed 6–26–2000; operative 6–26–2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

Article 3. SFP Application Procedure

§ 1859.20. SFP Application for Determination of Eligibility.

A School District seeking a determination of eligibility for a SFP project shall complete and file the following documents with the OPSC:

(a) For new construction, either districtwide, HSAA, or Super HSAA, or for modernization projects, the Form SAB 50–03.

(b) For new construction projects, either districtwide, HSAA or Super HSAA, the Form SAB 50–01.

(c) For new construction projects, the Form SAB 50–02.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35, 17070.50, 17070.80, 17071.10, 17071.25, 17073.10 and 17073.25, Education Code.

HISTORY

1. New article 3 (sections 1859.20–1859.21) and section filed 12–3–98 as an emergency; operative 12–3–98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4–2–99 or emergency language will be repealed by operation of law on the following day.
2. Change without regulatory effect amending subsection (a) filed 12–23–98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 52).
3. New article 3 (sections 1859.20–1859.21) and section refiled 3–31–99 as an emergency; operative 3–31–99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7–29–99 or emergency language will be repealed by operation of law on the following day.
4. New article 3 (sections 1859.20–1859.21) and section refiled 7–29–99 as an emergency; operative 7–29–99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11–26–99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7–29–99 order, including amendment of section, transmitted to OAL 8–26–99 and filed 10–8–99 (Register 99, No. 41).
6. Amendment of subsections (a)–(c) filed 6–26–2000; operative 6–26–2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
7. Amendment of subsections (a) and (c) filed 7–17–2000 as an emergency; operative 7–17–2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11–14–2000 or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 7–17–2000 order transmitted to OAL 11–9–2000 and filed 12–27–2000 (Register 2000, No. 52).
9. Amendment filed 1–2–2001 as an emergency; operative 1–2–2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5–2–2001 or emergency language will be repealed by operation of law on the following day.
10. Certificate of Compliance as to 1–2–2001 order transmitted to OAL 5–1–2001 and filed 6–13–2001 (Register 2001, No. 24).
11. Amendment filed 4–10–2002; operative 4–10–2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).
12. Amendment filed 11–4–2002 as an emergency; operative 11–4–2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11–4–2003 or emergency language will be repealed by operation of law on the following day.
13. Amendment of first paragraph and amendment of NOTE filed 2–27–2003 as an emergency; operative 2–27–2003 (Register 2003, No. 9). A Certificate of Compliance must be transmitted to OAL by 6–27–2003 or emergency language will be repealed by operation of law on the following day.
14. Amendment of first paragraph and amendment of NOTE refiled 6–19–2003 as an emergency; operative 6–19–2003 (Register 2003, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–17–2003 or emergency language will be repealed by operation of law on the following day.
15. Amendment of first paragraph and amendment of NOTE refiled 10–10–2003 as an emergency; operative 10–10–2003 (Register 2003, No. 41). A Certificate of Compliance must be transmitted to OAL by 2–9–2004 or emergency language will be repealed by operation of law on the following day.
16. Certificate of Compliance as to 11–4–2002 order transmitted to OAL 11–4–2003 and filed 12–19–2003 (Register 2003, No. 51).
17. Certificate of Compliance as to 10–10–2003 order transmitted to OAL 2–9–2004 and filed 3–23–2004 (Register 2004, No. 13).

§ 1859.21. SFP Application for Funding.

A School District seeking funding for a modernization or new construction project shall complete and file with the OPSC, the Form SAB 50–04.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35, 17070.63, 17072.30, 17073.25 and 17074.15, Education Code.

HISTORY

1. New section filed 12–3–98 as an emergency; operative 12–3–98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4–2–99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3–31–99 as an emergency; operative 3–31–99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7–29–99 or emergency language will be repealed by operation of law on the following day.
3. Amendment filed 7–12–99 as an emergency; operative 7–12–99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11–9–99 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 7–29–99 as an emergency; operative 7–29–99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11–26–99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7–29–99 order, including amendment of section, transmitted to OAL 8–26–99 and filed 10–8–99 (Register 99, No. 41).
6. Certificate of Compliance as to 7–12–99 order, including further amendments, transmitted to OAL 11–5–99 and filed 12–22–99 (Register 99, No. 52).
7. Amendment filed 6–26–2000; operative 6–26–2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
8. Amendment filed 7–17–2000 as an emergency; operative 7–17–2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11–14–2000 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 7–17–2000 order transmitted to OAL 11–9–2000 and filed 12–27–2000 (Register 2000, No. 52).
10. Amendment filed 1–2–2001 as an emergency; operative 1–2–2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5–2–2001 or emergency language will be repealed by operation of law on the following day.
11. Certificate of Compliance as to 1–2–2001 order transmitted to OAL 5–1–2001 and filed 6–13–2001 (Register 2001, No. 24).
12. Amendment filed 7–25–2001; operative 7–25–2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).
13. Amendment of form SAB 50–04 (incorporated by reference) and amendment of section filed 8–13–2001; operative 8–13–2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).
14. Amendment filed 4–10–2002; operative 4–10–2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).
15. Amendment filed 5–2–2002; operative 6–1–2002 (Register 2002, No. 18).
16. Amendment filed 11–4–2002 as an emergency; operative 11–4–2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11–4–2003 or emergency language will be repealed by operation of law on the following day.
17. Amendment of section and NOTE filed 2–27–2003 as an emergency; operative 2–27–2003 (Register 2003, No. 9). A Certificate of Compliance must be trans-

mitted to OAL by 6–27–2003 or emergency language will be repealed by operation of law on the following day.

18. Amendment of section and NOTE refiled 6–19–2003 as an emergency; operative 6–19–2003 (Register 2003, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–17–2003 or emergency language will be repealed by operation of law on the following day.
19. Amendment of section and NOTE refiled 10–10–2003 as an emergency; operative 10–10–2003 (Register 2003, No. 41). A Certificate of Compliance must be transmitted to OAL by 2–9–2004 or emergency language will be repealed by operation of law on the following day.
20. Certificate of Compliance as to 11–4–2002 order transmitted to OAL 11–4–2003 and filed 12–19–2003 (Register 2003, No. 51).
21. Certificate of Compliance as to 10–10–2003 order transmitted to OAL 2–9–2004 and filed 3–23–2004 (Register 2004, No. 13).

§ 1859.22. SFP Application for Funding on Leased Land.

In addition to meeting the requirements of Sections 1859.20 and 1859.21 or 1859.120, a district may receive SFP funds for facilities that are or will be located on real property leased by the district provided all the following are met:

(a) The real property is leased from a governmental agency.

(b) The term of the lease for the land for which the district is requesting SFP funding at the time the Approved Application is accepted is one of the following:

(1) At least 25 years if the lease is for real property owned by the federal government.

(2) At least 40 years if the lease is for real property owned by a governmental agency other than the federal government.

(3) At least 30 years if the lease is for real property owned by a governmental agency other than the federal government and the district has certified to all the following:

(A) There are no other educationally adequate sites for new construction available under a 40–year lease.

(B) The cost per year to lease the real property for no less than 30 years is no greater than the cost per year to lease the real property for 40 years.

(4) At least 30 years if the lease is for real property owned by a governmental agency other than the federal government and the district has provided other evidence satisfactory to the Board that a shorter lease term is necessary.

A district seeking modernization funding on land or facilities leased by the district pursuant to this Section is subject to the adjustment in the district's baseline eligibility pursuant to Section 1859.51(c).

A district seeking new construction funding on land or facilities leased by the district pursuant to this Section is subject to the adjustment in the district's baseline eligibility pursuant to Section 1859.51(a) and (i).

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17070.71, Education Code.

HISTORY

1. New section filed 7–25–2001; operative 7–25–2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).
2. Amendment of first paragraph filed 11–4–2002 as an emergency; operative 11–4–2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11–4–2003 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 11–4–2002 order transmitted to OAL 11–4–2003 and filed 12–19–2003 (Register 2003, No. 51).

§ 1859.23. SFP Application for Funding on District–Owned Land.

Prior to the district requesting SFP funds for facilities, the district must hold title to the real property where the facilities will be located, unless the project meets the requirements of Regulation Section 1859.22.

NOTE: Authority cited: Sections 17070.35 and 17070.70, Education Code. Reference: Section 17070.70, Education Code.

HISTORY

1. New section filed 5–24–2005 as an emergency; operative 5–24–2005 (Register 2005, No. 21). A Certificate of Compliance must be transmitted to OAL by 9–21–2005 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 5–24–2005 order transmitted to OAL 9–16–2005 and filed 10–24–2005 (Register 2005, No. 43).

Article 4. Determining Existing School Building Capacity

§ 1859.30. Calculations to Determine Existing School Building Capacity.

For new construction projects the district shall complete, on a one–time basis, the classroom inventory pursuant to Sections 1859.31 and 1859.32 and report that inventory on the Form SAB 50–02. Completion of the calculations made on this Form shall represent the district's new construction Existing School Building Capacity.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17071.10, Education Code.

HISTORY

1. New article 4 (sections 1859.30–1859.35) and section filed 12–3–98 as an emergency; operative 12–3–98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4–2–99 or emergency language will be repealed by operation of law on the following day.
2. New article 4 (sections 1859.30–1859.35) and section refiled 3–31–99 as an emergency; operative 3–31–99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7–29–99 or emergency language will be repealed by operation of law on the following day.
3. New article 4 (sections 1859.30–1859.35) and section refiled 7–29–99 as an emergency; operative 7–29–99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11–26–99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7–29–99 order, including amendment of section, transmitted to OAL 8–26–99 and filed 10–8–99 (Register 99, No. 41).
5. Amendment filed 6–26–2000; operative 6–26–2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
6. Amendment filed 7–17–2000 as an emergency; operative 7–17–2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11–14–2000 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 7–17–2000 order transmitted to OAL 11–9–2000 and filed 12–27–2000 (Register 2000, No. 52).
8. Amendment filed 1–2–2001 as an emergency; operative 1–2–2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5–2–2001 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 1–2–2001 order transmitted to OAL 5–1–2001 and filed 6–13–2001 (Register 2001, No. 24).
10. Amendment filed 4–10–2002; operative 4–10–2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).
11. Amendment filed 11–4–2002 as an emergency; operative 11–4–2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11–4–2003 or emergency language will be repealed by operation of law on the following day.
12. Certificate of Compliance as to 11–4–2002 order transmitted to OAL 11–4–2003 and filed 12–19–2003 (Register 2003, No. 51).

§ 1859.31. Gross Classroom Inventory.

The district shall prepare a gross inventory consisting of all classrooms owned or leased in the district, the HSAA or Super HSAA as appropriate. For the purpose of this gross classroom inventory, the following shall be considered a classroom. Any classroom:

(a) for which a contract was signed for the construction or acquisition of facilities or for which construction work has commenced at the time the SFP application for determination of eligibility is submitted to the OPSC;

(b) constructed with funds from the LPP;

(c) used for Special Day Class or Resource Specialist Programs;

(d) that are standard classrooms, shops, science laboratories, computer laboratories, or computer classrooms;

(e) acquired or created for Class Size Reduction purposes;

(f) used for preschool programs;

(g) converted to any non–classroom purpose including use by others;

(h) with Housing and Community Development or Department of Housing insignia;

(i) acquired for interim housing for a modernization project;

(j) leased or purchased under the State Relocatable Program pursuant to Chapter 14 of Part 10 of the Education Code;

(k) that have a waiver for continued use by the Board for Field Act exemptions;

(*l*) used for Community School purposes;

(m) included in a closed school.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.25 and 17071.30, Education Code.

HISTORY

1. New section filed 12–3–98 as an emergency; operative 12–3–98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4–2–99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3–31–99 as an emergency; operative 3–31–99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7–29–99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7–29–99 as an emergency; operative 7–29–99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11–26–99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7–29–99 order transmitted to OAL 8–26–99 and filed 10–8–99 (Register 99, No. 41).
5. Amendment of first paragraph filed 11–4–2002 as an emergency; operative 11–4–2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11–4–2003 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 11–4–2002 order transmitted to OAL 11–4–2003 and filed 12–19–2003 (Register 2003, No. 51).

§ 1859.32. Adjustments to Gross Classroom Inventory.

After the gross classroom inventory has been prepared pursuant to Section 1859.31, it will be reduced by the following. Any classrooms:

(a) abandoned and approved for replacement as a hardship under the provisions of the LPP;

(b) at a school operated on a year–round schedule that has been used continuously for at least 50 percent of the time for preschool programs in the five years preceding the receipt of the application for determination of eligibility;

(c) included in any new construction LPP project that has not received a Phase C apportionment;

(d) that is portable and owned or leased by the district for 20 years or more that was approved for abandonment in a LPP project and the plans for the project had DSA approval prior to November 4, 1998;

(e) that is a trailer and is transported/towed on its own wheels and axles;

(f) used exclusively for regional occupational centers, regional occupational programs, child care, preschool and/or Adult Education Programs, and was built or acquired with funds specifically available for those purposes;

(g) of less than 700 interior square feet;

(h) originally built for instructional use, but converted to one of the following:

(1) used continuously for school administration for at least five years prior to the submittal of the application to the OPSC for determination of eligibility.

(2) used continuously for central or main district administration for at least five years prior to the submittal of the application to the OPSC for determination of eligibility.

(3) used for school library purposes during the previous school year.

(i) owned but leased to another district.

(j) any portable classroom excluded by Education Code Section 17071.30.

(k) that is permanent space and leased for less than five years.

(*l*) any permanent classroom contained in a project for which the construction contract was signed between August 27, 1998 and November 18, 1998 and for which the district did not have full project eligibility under the LPP.

(m) that was acquired with joint–use funds specifically available for that purpose.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17052, 17071.25, 17071.30 and 17077.40, Education Code.

HISTORY

1. New section filed 12–3–98 as an emergency; operative 12–3–98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4–2–99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3–31–99 as an emergency; operative 3–31–99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7–29–99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7–29–99 as an emergency; operative 7–29–99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11–26–99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7–29–99 order, including amendment of section, transmitted to OAL 8–26–99 and filed 10–8–99 (Register 99, No. 41).
5. New subsection (*l*) filed 1–10–2000; operative 1–7–2000 pursuant to Government Code section 11349.3(a) (Register 2000, No. 2).
6. Amendment of section heading filed 6–26–2000; operative 6–26–2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
7. New subsection (m) and amendment of NOTE filed 11–4–2002 as an emergency; operative 11–4–2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11–4–2003 or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 11–4–2002 order transmitted to OAL 11–4–2003 and filed 12–19–2003 (Register 2003, No. 51).

§ 1859.33. Classroom Identification and Determination of Existing School Building Capacity.

The district shall identify by grade level, based on its most typical use for grades K–6, 7–8 or 9–12, or non–severe or severe Special Day Class education, each classroom included in the classroom inventory determined pursuant to Section 1859.31 and not excluded pursuant to Section 1859.32. These classrooms shall be reported on the Form SAB 50–02.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.25, 17071.30, 17071.33, 17071.35 and 17071.40, Education Code.

HISTORY

1. New section filed 12–3–98 as an emergency; operative 12–3–98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4–2–99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3–31–99 as an emergency; operative 3–31–99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7–29–99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7–29–99 as an emergency; operative 7–29–99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11–26–99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7–29–99 order, including amendment of section, transmitted to OAL 8–26–99 and filed 10–8–99 (Register 99, No. 41).
5. Amendment filed 6–26–2000; operative 6–26–2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
6. Amendment filed 7–17–2000 as an emergency; operative 7–17–2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11–14–2000 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 7–17–2000 order transmitted to OAL 11–9–2000 and filed 12–27–2000 (Register 2000, No. 52).
8. Amendment filed 1–2–2001 as an emergency; operative 1–2–2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5–2–2001 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 1–2–2001 order transmitted to OAL 5–1–2001 and filed 6–13–2001 (Register 2001, No. 24).
10. Amendment filed 4–10–2002; operative 4–10–2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).
11. Amendment filed 11–4–2002 as an emergency; operative 11–4–2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11–4–2003 or emergency language will be repealed by operation of law on the following day.
12. Certificate of Compliance as to 11–4–2002 order transmitted to OAL 11–4–2003 and filed 12–19–2003 (Register 2003, No. 51).
13. Amendment filed 1–31–2005; operative 1–31–2005 pursuant to Government Code section 11343.4 (Register 2005, No. 5).

§ 1859.35. Calculation of Existing School Building Capacity.

The district's existing school building capacity shall be determined by totaling the amounts calculated in (a) with the amount determined in (b) or (c), whichever is the greater:

(a) With the exception of classrooms for Special Day Class pupils for which the multiplier is indicated on the Form SAB 50–02, multiply the number of available classrooms in the district, the HSAA or the Super HSAA by the following: 25 for each K–6 classroom and 27 for each 7–12 classroom. Available classrooms shall be determined by the reduction of classrooms identified in Section 1859.32 from the gross classroom inventory prepared pursuant to Section 1859.31 and the inclusion of portable classrooms as provided pursuant to Education Code Section 17071.30 (a) or (b).

(b) Multiply the K–6 pupil capacity of the elementary district, the unified district, the HSAA or the Super HSAA in a unified district as determined by the results of the calculations in (a) at the time of the initial determination of eligibility by six percent. When the elementary or unified district meets the Substantial Enrollment Requirement (SER) or qualifies for a waiver of the SER authorized by Education Code Sections 17017.6 and 17017.7 (c), the amount reported in (b) shall be zero. For High School Districts, the amount reported in (b) shall be zero.

(c) A number equal to the number of pupils provided operational grants as indicated in the current report of operational grants made by the CDE pursuant to Education Code Section 42268, less the number of pupils at a school on the MTYRE calendar that has a density of at least 200 or more pupils per acre when the district has at least 40 percent of its enrollment on MTYRE as of the date of determination of the existing school building capacity of the district.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.10, 17071.25, 17071.33, 17071.35 and 17071.40, Education Code.

HISTORY

1. New section filed 12–3–98 as an emergency; operative 12–3–98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4–2–99 or emergency language will be repealed by operation of law on the following day.
2. Change without regulatory effect amending subsection (b) filed 3–10–99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 11).
3. New section refiled 3–31–99 as an emergency; operative 3–31–99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7–29–99 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 7–29–99 as an emergency; operative 7–29–99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11–26–99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7–29–99 order, including amendment of section, transmitted to OAL 8–26–99 and filed 10–8–99 (Register 99, No. 41).
6. Amendment of subsection (b) filed 6–26–2000; operative 6–26–2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
7. Amendment of subsections (a)–(b) filed 11–4–2002 as an emergency; operative 11–4–2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11–4–2003 or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 11–4–2002 order transmitted to OAL 11–4–2003 and filed 12–19–2003 (Register 2003, No. 51).
9. Amendment filed 1–31–2005; operative 1–31–2005 pursuant to Government Code section 11343.4 (Register 2005, No. 5).

Article 5. Enrollment Projections

§ 1859.40. Enrollment Projections Used to Determine a District's Eligibility for New Construction Grants.

The district shall provide an enrollment Certification and report enrollment data, on the Form SAB 50–01. The information provided on this Form shall serve as the basis for determining a district's eligibility for New Construction funding. The enrollment projections generated by completing the Form SAB 50–01 shall be known as Cohort Projections for purposes of this section.

(a) In addition, a School District that meets the eligibility criteria as specified in Education Code Section 17071.75(a)(1) and has applied for determination of eligibility pursuant to Section 1859.20, may submit a request for review of an Alternative Enrollment Projection to the OPSC and the DRU.

(b) The request must contain all of the following to substantiate the Alternative Enrollment Projection methodology:

(1) provide a description to the OPSC on how the district cannot adequately meet its housing needs at the impacted school sites, after considering all existing eligibility mechanisms available from the Cohort Projections;

(2) a written explanation of the methodology for calculating the enrollment projections;

(3) an electronic copy of the calculations used in determining the enrollment projections;

(4) a disclosure of any assumptions that support the calculations of enrollment projections;

(5) a minimum of three years or more, as determined necessary by the DRU, of historical data used in calculating the enrollment projections. The data must be verifiable, annually based, and geographically organized if the school district's boundaries have changed since the 2000 Census conducted by the United States Census Bureau.

(6) a list of source(s) used to collect all applicable data with contact information for each data source;

(7) a separate enrollment projection for each grade level;

(8) a district–wide enrollment projection for any district that reports district–wide enrollment on the Form SAB 50–01; or HSAA enrollment projection(s) for any district that reports enrollment for one or more HSAA(s) on the Form SAB 50–01; or Super HSAA enrollment projection(s) for any district that reports enrollment for one or more Super HSAA(s) on the Form SAB 50–01.

The eligibility generated by an Alternative Enrollment Projection shall be made available to eligible school districts pursuant to Education Code Section 17071.75(a)(1), that received the OPSC's and the DRU's approval of the Alternative Enrollment Projection, until the combined Apportionments for all funding requests utilizing eligibility available from the Alternative Enrollment Projection reaches $500 million or the Board has no funds to apportion from the Kindergarten–University Public Education Facilities Bond Act of 2004.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.75 and 17071.76, Education Code.

HISTORY

1. New article 5 (sections 1859.40–1859.43) and section filed 12–3–98 as an emergency; operative 12–3–98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4–2–99 or emergency language will be repealed by operation of law on the following day.
2. New article 5 (sections 1859.40–1859.43) and section refiled 3–31–99 as an emergency; operative 3–31–99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7–29–99 or emergency language will be repealed by operation of law on the following day.
3. New article 5 (sections 1859.40–1859.43) and section refiled 7–29–99 as an emergency; operative 7–29–99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11–26–99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7–29–99 order, including amendment of section, transmitted to OAL 8–26–99 and filed 10–8–99 (Register 99, No. 41).
5. Amendment filed 6–26–2000; operative 6–26–2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
6. Amendment filed 1–2–2001 as an emergency; operative 1–2–2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5–2–2001 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 1–2–2001 order transmitted to OAL 5–1–2001 and filed 6–13–2001 (Register 2001, No. 24).
8. Amendment filed 4–10–2002; operative 4–10–2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).
9. Amendment filed 11–4–2002 as an emergency; operative 11–4–2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11–4–2003 or emergency language will be repealed by operation of law on the following day.

10. Certificate of Compliance as to 11–4–2002 order transmitted to OAL 11–4–2003 and filed 12–19–2003 (Register 2003, No. 51).

11. Amendment of first paragraph and new subsections (a)–(b)(8) filed 5–15–2006 as an emergency; operative 5–15–2006 (Register 2006, No. 20). A Certificate of Compliance must be transmitted to OAL by 9–12–2006 or emergency language will be repealed by operation of law on the following day.

12. Certificate of Compliance as to 5–15–2006 order transmitted to OAL 7–19–2006 and filed 8–11–2006 (Register 2006, No. 32).

§ 1859.41. High School Attendance Area Reporting.

(a) A district may request that its eligibility determination for a New Construction Grant be based on a HSAA or Super HSAA basis if it meets all the following criteria:

(1) The district demonstrates that the eligibility determination for a New Construction Grant in at least one of the district's HSAA or Super HSAA results in negative eligibility for maximum funding at any grade level within the HSAA or Super HSAA.

(2) The New Construction Grant eligibility determination for the HSAA or Super HSAA is based on the existing boundaries of the HSAA or Super HSAA and the capacity and projected enrollment of the HSAA or Super HSAA as shown in the Form SAB 50–03.

(3) The eligibility determination for the HSAA or Super HSAA includes a currently operated high school that serves any combination of grades nine through twelve and that high school is not a continuation high school or a community school.

(b) If a district meets the criteria in subsection (a) and requests its eligibility determination to be based on an HSAA or Super HSAA, eligibility for a future New Construction Grant, with the exception of community school pupil grants for a county superintendent, in that HSAA or Super HSAA must be filed on the same basis for a period of five years from the date the district received an apportionment that was justified by eligibility under that HSAA or Super HSAA. When only a portion of the enrollment at a feeder school actually contributes to the HSAA or Super HSAA, the district shall report, as a percentage, only that portion of the enrollment. A county superintendent reporting on the basis of one or more HSAA basis may file applications by utilizing HSAA or Super HSAA boundaries of any district within the county. A county superintendent may report enrollment and file eligibility for a future New Construction Grant separately for special education pupils or for community school pupils.

If a district requests to re–file its eligibility determination from HSAA or Super HSAA to district–wide after the five year time period has elapsed, the existing school building capacity in the district will be determined based on classrooms available in the HSAA or Super HSAA at the time of initial request for eligibility determination and the current classrooms in the remaining portion of the district. Once the baseline eligibility has been determined for the district, it will be adjusted for classrooms constructed, funded or acquired in that HSAA or Super HSAA as provided by Section 1859.51.

Existing boundaries of a HSAA or Super HSAA may only be changed as a result of Section 1859.51(f).

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35, 17071.75 and 17071.76, Education Code.

HISTORY

1. New section filed 12–3–98 as an emergency; operative 12–3–98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4–2–99 or emergency language will be repealed by operation of law on the following day.

2. New section refiled 3–31–99 as an emergency; operative 3–31–99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7–29–99 or emergency language will be repealed by operation of law on the following day.

3. New section refiled 7–29–99 as an emergency; operative 7–29–99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11–26–99 or emergency language will be repealed by operation of law on the following day.

4. Certificate of Compliance as to 7–29–99 order, including amendment of section, transmitted to OAL 8–26–99 and filed 10–8–99 (Register 99, No. 41).

5. Amendment filed 4–10–2002; operative 4–10–2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).

6. Amendment filed 11–4–2002 as an emergency; operative 11–4–2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11–4–2003 or emergency language will be repealed by operation of law on the following day.

7. Certificate of Compliance as to 11–4–2002 order transmitted to OAL 11–4–2003 and filed 12–19–2003 (Register 2003, No. 51).

§ 1859.42. Projecting Non–Special Day Class Enrollment.

The district enrollment, as reported on the Form SAB 50–01, shall be used to calculate the district's projected enrollment other than Special Day Class enrollment. The OPSC shall use the following methodology to determine the districts projected enrollment:

(a) All projected enrollment with the exception of Special Day Class enrollment shall be calculated pursuant to the cohort survival enrollment projection system which is described as follows:

(1) For all grades, determine the numerical change in enrollment between the current grade and the next lower grade in the previous year; determine the numerical change in enrollment between the previous year grade and the next lower grade in the second previous year; determine the numerical change in enrollment between the second previous year grade and the next lower grade in the third previous year. Determine the numerical change of kindergarten enrollment on the second previous and third previous year respectively.

(2) Compute the annual change in enrollment as explained in (1) for each grade. The annual change shall then be weighted by multiplying the most recent annual change in enrollment by three, the next most recent annual change by two, and the earliest annual change by one, and dividing the sum of the annual weighted changes for each grade by six. The result shall be the average annual change.

(3) Progress the latest reported enrollment through the five–year projection period, modifying the grade progression each year by the average annual change for each grade as computed in (2).

(b) The enrollment projection will be augmented based on the number of pupils as reported by the district on Form SAB 50–01, that will reside in dwelling units included in an approved and valid tentative or final subdivision map that exceed the number of pupils projected as a result of the cohort survival method for that tentative or final subdivision map. The augmentation shall be as follows:

(1) Progress the current enrollment as reported on Form SAB 50–01, for one year for each grade level. For kindergarten, the progressed current enrollment shall be the same as the reported current enrollment.

(2) Subtract the current enrollment progressed one year for each grade level from the one–year projection of enrollment for each grade level as determined in (a). If the computation results in a negative number, the number shall be deemed zero.

(3) Divide the current enrollment progressed one year for each grade level by the sum of the current enrollment progressed one year in all grade levels.

(4) Multiply the number of housing units in the approved and valid tentative or final subdivision maps by the pupil yield factor provided on the Form SAB 50–01.

(5) Multiply the number of pupils determined in (4) by the percentages determined in (3) for each grade.

(6) Subtract five times the value determined in (2) from the value determined in (5). If the computation results in a negative number, the number shall be deemed zero.

(7) Add the value in (6) to the fifth year of projected enrollment as computed in (a) to establish the augmented projection of enrollment.

(c) The projected enrollment of a HSAA or Super HSAA shall be computed in the same manner as that set forth in this section, except that the enrollment used in such computation shall be that of the HSAA or Super HSAA rather than the entire district. Augmentation as provided in (b) of this Section may include only dwelling units located in the HSAA or Super HSAA.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.75 and 17071.76, Education Code.

HISTORY

1. New section filed 12–3–98 as an emergency; operative 12–3–98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4–2–99

or emergency language will be repealed by operation of law on the following day.

2. New section refiled 3–31–99 as an emergency; operative 3–31–99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7–29–99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7–29–99 as an emergency; operative 7–29–99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11–26–99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7–29–99 order, including amendment of section, transmitted to OAL 8–26–99 and filed 10–8–99 (Register 99, No. 41).
5. Amendment of first paragraph and subsections (b), (b)(1) and (b)(4) filed 6–26–2000; operative 6–26–2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
6. Amendment of first paragraph and subsections (b), (b)(1) and (b)(4) filed 1–2–2001 as an emergency; operative 1–2–2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5–2–2001 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 1–2–2001 order transmitted to OAL 5–1–2001 and filed 6–13–2001 (Register 2001, No. 24).
8. Amendment filed 4–10–2002; operative 4–10–2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).
9. Amendment of first paragraph and subsections (b), (b)(1), (b)(4) and (c) filed 11–4–2002 as an emergency; operative 11–4–2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11–4–2003 or emergency language will be repealed by operation of law on the following day.
10. Certificate of Compliance as to 11–4–2002 order transmitted to OAL 11–4–2003 and filed 12–19–2003 (Register 2003, No. 51).
11. Amendment of subsections (b) and (b)(4) filed 4–26–2005; operative 4–26–2005 pursuant to Government Code section 11343.4 (Register 2005, No. 17).

§ 1859.43. Projecting Special Day Class Enrollment.

The district enrollment, as reported on the Form SAB 50–01, shall be used to calculate the district's projected Special Day Class enrollment. The OPSC shall use the following methodology to determine the district's projected enrollment:

(a) The projected enrollment of each classification of Special Day Class students served by a school district shall be computed by multiplying the reported enrollment of Special Day Class students by the five–year projection of the same grade level of students as determined by Section 1859.42. The resulting value shall be divided by the current enrollment of the same students as provided on Form SAB 50–01.

(b) The projected enrollment of each classification of Special Day Class students served by a county office of education shall be computed as follows:

(1) Determine the percentage change in total Special Day Class enrollment from the previous year to the current year; determine the percentage change in total Special Day Class enrollment in the second previous year to the previous year; determine the percentage change in total Special Day Class enrollment in the third previous year to the second previous year. To determine the average annual change, add the three percentage changes and divide by three.

(2) The current Special Day Class enrollment provided by the county office of education as reported on Form SAB 50–01, shall be adjusted by the average annual percentage change in (1) for each year until the five–year projected enrollment has been determined.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.75 and 17071.76, Education Code.

HISTORY

1. New section filed 12–3–98 as an emergency; operative 12–3–98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4–2–99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3–31–99 as an emergency; operative 3–31–99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7–29–99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7–29–99 as an emergency; operative 7–29–99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11–26–99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7–29–99 order, including amendment of section, transmitted to OAL 8–26–99 and filed 10–8–99 (Register 99, No. 41).
5. Amendment filed 6–26–2000; operative 6–26–2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
6. Amendment filed 1–2–2001 as an emergency; operative 1–2–2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5–2–2001 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 1–2–2001 order transmitted to OAL 5–1–2001 and filed 6–13–2001 (Register 2001, No. 24).
8. Amendment filed 4–10–2002; operative 4–10–2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).
9. Amendment of first paragraph and subsections (a) and (b)(2) filed 11–4–2002 as an emergency; operative 11–4–2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11–4–2003 or emergency language will be repealed by operation of law on the following day.
10. Certificate of Compliance as to 11–4–2002 order transmitted to OAL 11–4–2003 and filed 12–19–2003 (Register 2003, No. 51).
11. Amendment of subsection (b)(1) filed 1–7–2008; operative 2–6–2008 (Register 2008, No. 2).

Article 6. New Construction Eligibility Determination

§ 1859.50. Calculations to Determine New Construction Baseline Eligibility.

The district shall calculate its eligibility determination by completion of the Form SAB 50–03. Eligibility determination for New Construction Grant(s) may be requested on either a district–wide basis, a HSAA or Super HSAA basis.

If a district requests to have its eligibility determination made on a district–wide basis, eligibility for future grants in the district must be filed on the same basis for a period of five years from the date the district received an apportionment that was justified by eligibility determined on a district–wide basis.

If a district requests to re–file its eligibility determination from district–wide to HSAA to Super HSAA after the five year time period has elapsed, the existing school building capacity in the HSAA or Super HSAA will be determined based on the classrooms available in the HSAA or Super HSAA at the time of the initial district–wide request for eligibility determination. Once the baseline eligibility has been determined for the HSAA or Super HSAA, it will be adjusted for classrooms constructed, funded or acquired in that HSAA or Super HSAA as provided by Section 1859.51.

If the district requests to have its eligibility determination made on a HSAA or Super HSAA, it must meet the criteria of Section 1859.41.

The calculated eligibility on the Form SAB 50–03, is the initial eligibility of the district, the HSAA or Super HSAA and shall be referenced as the baseline eligibility for future SFP funding. The baseline eligibility is the basis for filing Form SAB 50–04, for a new construction SFP grant.

If a special education program and the title to the related facilities is transferred between a school district and county office of education after the baseline eligibility was established by the Board, the following shall be required if the title transfer took place after January 1, 2007, or if requested by the school district and county office of education due to a title transfer that took place prior to January 1, 2007:

(a) The sending School District's existing school building capacity shall be adjusted pursuant to Section 1859.51(r).

(b) The receiving School District's existing school building capacity shall be adjusted pursuant to Section 1859.51(i).

(c) The sending School District's enrollment projection shall be adjusted pursuant to Education Code Section 17071.75(f).

(d) The receiving School District shall remit to the State a proportionate share of any financial hardship assistance provided for the project as described in Section 1859.106.

For purposes of this paragraph, the transfer of title to facilities shall also include:

(1) A pre–existing lease, for the duration of more than five years whether in a single lease or cumulative total of several leases, of the re-

ceiving School District's facilities by the sending School District that is terminated after transfer of the special education program takes place.

(2) A lease, for the duration of more than five years whether in a single lease or cumulative total of several leases, of the sending School District's facilities by the receiving School District.

There shall not be any further adjustments made as result of any subsequent transfers of that program for a period of five years from the date of the initial transfer or before all applicable funds have been remitted to the State as a result of the initial transfer. Both School Districts shall submit a Form SAB 50–01 for enrollment changes immediately upon transfer of title.

A district affected by a reorganization election on or after November 4, 1998 may file an application for a determination of new construction baseline eligibility after a successful reorganization election.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.10, 17071.25, 17071.30, 17071.33, 17071.40, 17071.75 and 17071.76, Education Code.

HISTORY

1. New article 6 (section 1859.50–1859.51) and section filed 12–3–98 as an emergency; operative 12–3–98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4–2–99 or emergency language will be repealed by operation of law on the following day.
2. Change without regulatory effect amending section filed 12–23–98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 52).
3. New article 6 (sections 1859.50–1859.51) and section refiled 3–31–99 as an emergency; operative 3–31–99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7–29–99 or emergency language will be repealed by operation of law on the following day.
4. Amendment of second paragraph filed 7–12–99 as an emergency; operative 7–12–99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11–9–99 or emergency language will be repealed by operation of law on the following day.
5. New article 6 (sections 1859.50–1859.51) and section refiled 7–29–99 as an emergency; operative 7–29–99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11–26–99 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 7–29–99 order, including amendment of section, transmitted to OAL 8–26–99 and filed 10–8–99 (Register 99, No. 41).
7. Certificate of Compliance as to 7–12–99 order, including further amendments, transmitted to OAL 11–5–99 and filed 12–22–99 (Register 99, No. 52).
8. Amendment filed 6–26–2000; operative 6–26–2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
9. Amendment filed 7–17–2000 as an emergency; operative 7–17–2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11–14–2000 or emergency language will be repealed by operation of law on the following day.
10. Certificate of Compliance as to 7–17–2000 order transmitted to OAL 11–9–2000 and filed 12–27–2000 (Register 2000, No. 52).
11. Amendment of second paragraph filed 1–2–2001 as an emergency; operative 1–2–2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5–2–2001 or emergency language will be repealed by operation of law on the following day.
12. Certificate of Compliance as to 1–2–2001 order, including amendment of first paragraph, transmitted to OAL 5–1–2001 and filed 6–13–2001 (Register 2001, No. 24).
13. Amendment of second paragraph filed 7–25–2001; operative 7–25–2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).
14. Amendment of second paragraph filed 8–13–2001; operative 8–13–2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).
15. Amendment filed 4–10–2002; operative 4–10–2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).
16. Amendment of penultimate paragraph filed 5–2–2002; operative 6–1–2002 (Register 2002, No. 18).
17. Amendment of penultimate paragraph filed 8–12–2002 as an emergency; operative 8–12–2002 (Register 2002, No. 33). A Certificate of Compliance must be transmitted to OAL by 12–10–2002 or emergency language will be repealed by operation of law on the following day.
18. Amendment of first and fourth paragraphs filed 11–4–2002 as an emergency; operative 11–4–2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11–4–2003 or emergency language will be repealed by operation of law on the following day.
19. Certificate of Compliance as to 8–12–2002 order transmitted to OAL 12–3–2002 and filed 1–16–2003 (Register 2003, No. 3).
20. Certificate of Compliance as to 11–4–2002 order transmitted to OAL 11–4–2003 and filed 12–19–2003 (Register 2003, No. 51).
21. Amendment filed 1–7–2008; operative 2–6–2008 (Register 2008, No. 2).

§ 1859.51. Adjustments to the New Construction Baseline Eligibility.

The baseline eligibility for new construction determined on the Form SAB 50–03, will be adjusted as follows:

(a) Reduced by the number of pupils provided grants in a new construction SFP project and by the number of pupils that received a Preliminary Apportionment pursuant to Section 1859.140 or a Preliminary Charter School Apportionment pursuant to Section 1859.162.2.

(b) Reduced by the number of pupils housed, based on the loading standards pursuant to Education Code Section 17071.25(a)(2)(A), in a new construction LPP project funded under the provisions of the LPP pursuant to Sections 1859.12 or 1859.13.

(c) Reduced by the number of pupils housed in additional classrooms constructed or purchased based on the loading standards, pursuant to Education Code Section 17071.25(a)(2)(A), in a modernization SFP project.

(d) Adjusted as a result of the audit findings made pursuant to Sections 1859.90 and 1859.105.

(e) Increased/decreased by changes in projected enrollment in subsequent enrollment reporting years for all districts except decreases as provided in (j) below.

(f) Adjusted as a result of errors or omissions by the district or by the OPSC.

(g) Adjusted as a result of amendments to these Regulations that effect the eligibility.

(h) Increased by the number of pupils eligible for grants pursuant to Section 1859.82(a).

(i) Reduced by the number of pupils housed, based on loading standards pursuant to Education Code Section 17071.25(a)(2)(A), in any Classroom Provided after the baseline eligibility was determined by the Board with the exception of those pupils housed or to be housed in a classroom:

(1) That is a trailer and transportable/towed on its own wheels and axles.

(2) Of less than 700 interior square feet.

(3) That is a portable classroom, leased pursuant to Chapter 14 (commencing with Section 17085) of the Education Code.

(4) That is a portable classroom leased for a period of less than five years, whether in a single lease or cumulative total of several leases.

(5) That is a portable classroom that needs to be leased beyond five years to provide interim housing in a modernization or new construction project provided the cumulative lease term does not exceed a specified time period as determined by the SAB not to exceed three years on each qualifying project. For this purpose, a project means all work contained in a single set of construction plans.

(6) Where the contract for the lease, lease–purchase, purchase, or construction of the classroom was made prior to January 1, 2000.

(7) That is included in a SFP project where the district has funded a portion of the project beyond its required district contribution and the pupil capacity of the classroom does not exceed 150 percent of the number of pupils receiving a new construction grant (rounded up) for the SFP project.

(8) That was acquired with joint–use funds specifically available for that purpose.

(9) That was acquired with career technical education funds specifically available pursuant to Education Code Section 17078.72.

(10) That was built or acquired exclusively for regional occupational centers, regional occupational programs, child care, preschool and/or Adult Education Programs, and with funds specifically available for those purposes.

(11) That replaces a classroom, previously included in the determination of the district's new construction eligibility pursuant to Education

Code Section 17071.75, in a project funded by the district without participation from the State and the district permanently removes the replaced facility from classroom use immediately after the replacement classroom is occupied.

(12) That was constructed with Overcrowding Relief Grant funds specifically available for that purpose.

(j) For Small School Districts, decreased:

(1) By any reduction in projected enrollment that follows a three-year period after the district's eligibility was approved by the Board.

(2) By any increase in the number of pupils included in the latest operational grant report made by the CDE pursuant to Education Code Section 42268 beginning three years after the district's most current eligibility was approved by the Board. The reduction in eligibility shall be determined by the number of pupils included in the latest operational grant report that exceed the number of pupils included in the operational grant report in effect when the district's most current eligibility was approved by the Board or adjusted by a subsequent operational grant report after that date.

(k) Adjusted for any change in classroom inventory as a result of a reorganization election.

(*l*) For classroom loading standards adopted by the Board for non-severely disabled individuals with exceptional needs and severely disabled individuals with exceptional needs.

(m) As directed by the Board due to a finding of a Material Inaccuracy pursuant to Regulation Section 1859.104.1.

(n) Increased by the number of pupils that received a Preliminary Apportionment that was rescinded pursuant to Section 1859.148 or a Preliminary Charter School Apportionment that was rescinded pursuant to Section 1859.166.

(o) Adjusted for operational grant changes as determined/provided by the California Department of Education.

(p) For a HSAA district with Preliminary Apportionments within the 2002 or 2004 Critically Overcrowded School Facilities Account as follows:

(1) Decreased by the number of pupils that received a Preliminary Apportionment, distributed proportionately among HSAAs in which the pupils used to justify the conversion of the Preliminary Apportionment were enrolled but did not reside.

(2) In the subsequent enrollment reporting year after verification of Occupancy of a project, increased by the number of pupils equal to the reduction due to Section 1859.51(p)(1), for the project which was occupied.

(3) Increased by the number of pupils equal to the reduction due to Section 1859.51(p)(1), for a Preliminary Apportionment rescinded pursuant to the provisions of Section 1859.148.

(q) Adjusted by the difference between the Alternative Enrollment Projection for the current enrollment reporting year and the projected enrollment determined pursuant to Section 1859.42 for the current enrollment reporting year, or by the eligibility remaining from this calculation that can no longer be utilized if the funds made available pursuant to Education Code Section 17071.75(a)(1)(A) have been exhausted.

(r) Adjusted pursuant to Education Code Section 17071.75(b)(2) by the number of pupils housed, based on the loading standards pursuant to Education Code Section 17071.25(a)(2)(A), in any classroom(s) where title was relinquished to the School District receiving the transferred classroom(s).

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17052, 17070.51, 17071.25, 17071.75, 17071.76, 17072.20, 17077.40, 17078.72, 17079.20 and 42268, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. Change without regulatory effect amending first paragraph filed 12-23-98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 52).
3. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7-29-99 order, including amendment of section and NOTE, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
6. Amendment of section and NOTE filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
7. Amendment of first paragraph, subsections (e) and (i)(5) and new subsection (*l*) filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
9. Amendment of first paragraph and subsections (i)(5) and (i)(6) filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
10. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
11. Amendment of first paragraph filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).
12. New subsection (m) and amendment of NOTE filed 5-2-2002; operative 6-1-2002 (Register 2002, No. 18).
13. Amendment of first paragraph and subsection (a), new subsections (i)(7) and (n) and amendment of NOTE filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.
14. Amendment of subsections (a), (j) and (n) filed 2-13-2003 as an emergency pursuant to Education Code section 17078.64(b); operative 2-13-2003 (Register 2003, No. 7). A Certificate of Compliance must be transmitted to OAL by 6-13-2003 or emergency language will be repealed by operation of law on the following day.
15. Amendment of subsections (a), (j) and (n) refiled 6-13-2003 as an emergency; operative 6-13-2003 (Register 2003, No. 24). A Certificate of Compliance must be transmitted to OAL by 10-13-2003 or emergency language will be repealed by operation of law on the following day.
16. Amendment of subsections (a), (j) and (n) refiled 10-9-2003 as an emergency; operative 10-9-2003 (Register 2003, No. 41). A Certificate of Compliance must be transmitted to OAL by 2-6-2004 or emergency language will be repealed by operation of law on the following day.
17. Certificate of Compliance as to 11-4-2002 order transmitted to OAL 11-4-2003 and filed 12-19-2003 (Register 2003, No. 51).
18. Certificate of Compliance as to 10-9-2003 order transmitted to OAL 2-6-2004 and filed 3-23-2004 (Register 2004, No. 13).
19. Amendment of subsection (i), repealer of subsection (i)(5) and subsection renumbering filed 7-22-2004 as an emergency; operative 7-22-2004 (Register 2004, No. 30). A Certificate of Compliance must be transmitted to OAL by 11-19-2004 or emergency language will be repealed by operation of law on the following day.
20. Amendment of subsections (j)(1)-(2) filed 11-2-2004; operative 11-2-2004 pursuant to Government Code section 11343.4 (Register 2004, No. 45).
21. New subsection (o) filed 12-6-2004; operative 12-6-2004 pursuant to Government Code section 11343.4 (Register 2004, No. 50).
22. Certificate of Compliance as to 7-22-2004 order transmitted to OAL 11-12-2004 and filed 12-16-2004 (Register 2004, No. 51).
23. New subsections (p)-(p)(3) filed 10-27-2005; operative 10-27-2005 pursuant to Government Code section 11343.4 (Register 2005, No. 43).
24. New subsection (q) filed 5-15-2006 as an emergency; operative 5-15-2006 (Register 2006, No. 20). A Certificate of Compliance must be transmitted to OAL by 9-12-2006 or emergency language will be repealed by operation of law on the following day.
25. Certificate of Compliance as to 5-15-2006 order transmitted to OAL 7-19-2006 and filed 8-11-2006 (Register 2006, No. 32).
26. Amendment of subsection (a) filed 5-17-2007; operative 5-17-2007 pursuant to Government Code section 11343.4 (Register 2007, No. 20).
27. New subsection (i)(7) and amendment of NOTE filed 7-13-2007 as an emergency; operative 7-13-2007 (Register 2007, No. 28). Pursuant to Education Code section 17078.72(k) a Certificate of Compliance must be transmitted to OAL by 7-14-2008 or emergency language will be repealed by operation of law on the following day.
28. Repealer of subsection (i)(3), new subsections (i)(3)-(5) and (i)(10)-(11), subsection renumbering and amendment of NOTE filed 7-18-2007; operative 7-18-2007 pursuant to Government Code section 11343.4 (Register 2007, No. 29).
29. New subsection (i)(12) and amendment of NOTE filed 8-31-2007; operative 8-31-2007 pursuant to Government Code section 11343.4 (Register 2007, No. 35).
30. Editorial correction of HISTORY 27 (Register 2007, No. 52).
31. Amendment of subsection (p) and new subsection (r) filed 1-7-2008; operative 2-6-2008 (Register 2008, No. 2).

32. Certificate of Compliance as to 7–13–2007 order transmitted to OAL 3–18–2008 and filed 4–29–2008 (Register 2008, No. 18).

§ 1859.51.1. Baseline Adjustments for Locally Funded Facilities.

For any pupils that were reduced from the district's New Construction Eligibility in accordance with Section 1859.51(i) due to the construction contract being signed prior to the submission of the Approved Application, the district may request an increase to the new construction baseline eligibility pursuant to one of the following:

(a) By the number of pupils in which the district received a second reduction of pupils due to receiving State funding for classrooms included in a construction contract signed more than 180 days from the date the Approved Application was received by the OPSC. This request may be submitted in writing to the OPSC by the authorized District Representative no later than 120 days after this proposed regulation is in effect.

(b) By the number of pupils previously reduced from the baseline due to the construction contract exceeding 180 days from filing an Approved Application for those classrooms in the project and that are included in a request for State funding pursuant to Section 1859.70.2.

(c) By the number of pupils previously reduced from the baseline due to the District reporting the signing of contracts for construction or acquisition of classrooms prior to filing an Approved Application for those classrooms and where those classrooms are included in a current request for State funding pursuant to Section 1859.70.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.51, 17071.25, 17071.75 and 17071.76, Education Code.

HISTORY

1. New section filed 7–22–2004 as an emergency; operative 7–22–2004 (Register 2004, No. 30). A Certificate of Compliance must be transmitted to OAL by 11–19–2004 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 7–22–2004 order transmitted to OAL 11–12–2004 and filed 12–16–2004 (Register 2004, No. 51).

Article 7. Modernization Eligibility Determination

§ 1859.60. Calculation to Determine Modernization Baseline Eligibility.

The district shall calculate its modernization eligibility for each school site with the completion of the Form SAB 50–03. The eligibility determination may be made by either identifying all classrooms on the site pursuant to (a) or by the identification of all square footage on the site pursuant to (b), as follows:

(a) Identify all classrooms at the school site that would have been included in the Gross Classroom Inventory pursuant to Section 1859.31 that are:

(1) Permanent and at least 25 years old.

(2) Portable and at least 20 years old.

(3) The remaining classrooms not reported in (1) or (2) above.

(b) Identify all square footage at the school site that is:

(1) Permanent area and at least 25 years old.

(2) Portable classroom area and at least 20 years old.

(3) The remaining square footage on the site not reported in (1) or (2) above.

The age of the classroom or square footage shall begin 12 months after the plans for the building were approved by the DSA; or in the case of permanent or portable classrooms that were previously modernized with State funds or rehabilitated under the Charter School Facilities Program, the 25/20 year period shall begin on the date of its previous apportionment. For purposes of identifying square footage at a school site, include the total enclosed exterior square footage of the school buildings. For multilevel buildings, include the square footage at each level.

Enrollment at the school shall be the latest CBEDS report for K–6, 7–8 and 9–12 pupils. If the school is closed at the time of application for eligibility determination for modernization, and the district intends to reopen it and use it as a school for at least the next five years, the enrollment may be estimated based on district demographic data.

The calculated eligibility determined on the Form SAB 50–03, shall be referred to as the modernization baseline eligibility for the specific school site.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17073.15, 17073.20 and 17074.10, Education Code.

HISTORY

1. New article 7 (sections 1859.60–1859.61) and section filed 12–3–98 as an emergency; operative 12–3–98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4–2–99 or emergency language will be repealed by operation of law on the following day.
2. Change without regulatory effect amending first and last paragraphs filed 12–23–98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 52).
3. New article 7 (sections 1859.60–1859.61) and section refiled 3–31–99 as an emergency; operative 3–31–99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7–29–99 or emergency language will be repealed by operation of law on the following day.
4. New article 7 (sections 1859.60–1859.61) and section refiled 7–29–99 as an emergency; operative 7–29–99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11–26–99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7–29–99 order, including amendment of section, transmitted to OAL 8–26–99 and filed 10–8–99 (Register 99, No. 41).
6. Amendment of first and last paragraphs filed 6–26–2000; operative 6–26–2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
7. Amendment of first and last paragraphs filed 7–17–2000 as an emergency; operative 7–17–2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11–14–2000 or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 7–17–2000 order transmitted to OAL 11–9–2000 and filed 12–27–2000 (Register 2000, No. 52).
9. Amendment of first and last paragraphs filed 1–2–2001 as an emergency; operative 1–2–2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5–2–2001 or emergency language will be repealed by operation of law on the following day.
10. Certificate of Compliance as to 1–2–2001 order transmitted to OAL 5–1–2001 and filed 6–13–2001 (Register 2001, No. 24).
11. Amendment of first and last paragraphs filed 4–10–2002; operative 4–10–2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).
12. Amendment of first and last paragraphs filed 11–4–2002 as an emergency; operative 11–4–2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11–4–2003 or emergency language will be repealed by operation of law on the following day.
13. Certificate of Compliance as to 11–4–2002 order transmitted to OAL 11–4–2003 and filed 12–19–2003 (Register 2003, No. 51).
14. Amendment of first paragraph and subsections (a)(1)–(2), (b)(1)–(2) and penultimate paragraph filed 2–3–2005; operative 2–3–2005 pursuant to Government Code section 11343.4 (Register 2005, No. 6).
15. Amendment of subsection (b)(3) filed 5–17–2007; operative 5–17–2007 pursuant to Government Code section 11343.4 (Register 2007, No. 20).

§ 1859.61. Adjustments to the Modernization Baseline Eligibility.

The baseline eligibility for modernization as provided in Section 1859.60 for a specific site will be adjusted as follows:

(a) Reduced by the number of pupils provided grants in a modernization SFP project or a CSFP Rehabilitation project at the specific site.

(b) Reduced by the number of pupils housed, based on the loading standards pursuant to Education Code Section 17071.25(a)(2), in a modernization LPP project funded under the LPP pursuant to Sections 1859.14 and 1859.15.

(c) Increased by changes in projected enrollment in subsequent enrollment reporting years.

(d) Increased for additional facilities not previously modernized with State funds, that become 25 years old, if permanent, or 20 years old, if portable or as a result of audit findings made pursuant to Sections 1859.90 and 1859.105.

(e) Adjusted as a result of errors or omissions by the district or by the OPSC.

(f) Adjusted as a result of amendments to these Subgroup 5.5 Regulations that affect the eligibility.

(g) For classroom loading standards adopted by the Board for non-severely disabled individuals with exceptional needs and severely disabled individuals with exceptional needs.

(h) As directed by the Board due to a finding of a Material Inaccuracy pursuant to Regulation Section 1859.104.1.

(i) Increased for facilities previously modernized with State funds, which qualify for an additional modernization apportionment pursuant to Section 1859.78.8.

(j) Adjusted as a result of the Reconfiguration of an existing high school under the provisions of the Small High School Program.

(k) Decreased for facilities that were deemed eligible for modernization pursuant to Sections 1859.60 and 1859.61(d) and subsequently replaced, or will be replaced under a signed contract for construction or acquisition of facilities, in a project funded by the district without participation from the State.

(*l*) Adjusted as a result of replaced eligible portables funded with the Overcrowding Relief Grant, pursuant to Education Code Section 17079, et seq.

(m) Adjusted as a result of classrooms demolished and replaced pursuant to Regulation Section 1859.82.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.51, 17071.25, 17072.15, 17072.20, 17073.15, 17074.10, 17075.10 and 17079.30, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-29-99 order, including amendment of section and NOTE, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
5. New subsection (g) filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
7. New subsection (h) and amendment of NOTE filed 5-2-2002; operative 6-1-2002 (Register 2002, No. 18).
8. Amendment of subsection (d) filed 5-1-2003 as an emergency; operative 5-1-2003 (Register 2003, No. 18). A Certificate of Compliance must be transmitted to OAL by 8-29-2003 or emergency language will be repealed by operation of law on the following day.
9. Amendment of subsection (d) refiled 8-29-2003 as an emergency; operative 8-29-2003 (Register 2003, No. 35). A Certificate of Compliance must be transmitted to OAL by 12-29-2003 or emergency language will be repealed by operation of law on the following day.
10. Amendment of subsection (d) refiled 12-22-2003 as an emergency; operative 12-22-2003 (Register 2003, No. 52). A Certificate of Compliance must be transmitted to OAL by 4-20-2004 or emergency language will be repealed by operation of law on the following day.
11. Certificate of Compliance as to 12-22-2003 order transmitted to OAL 4-19-2004 and filed 5-25-2004 (Register 2004, No. 22).
12. New subsection (i) and amendment of NOTE filed 2-3-2005; operative 2-3-2005 pursuant to Government Code section 11343.4 (Register 2005, No. 6).
13. New subsection (j) and amendment of NOTE filed 3-14-2006; operative 3-14-2006 pursuant to Government Code section 11343.4 (Register 2006, No. 11).
14. Amendment of subsection (a) filed 5-17-2007; operative 5-17-2007 pursuant to Government Code section 11343.4 (Register 2007, No. 20).
15. New subsection (k) filed 7-18-2007; operative 7-18-2007 pursuant to Government Code section 11343.4 (Register 2007, No. 29).
16. New subsection (*l*) and amendment of NOTE filed 8-31-2007; operative 8-31-2007 pursuant to Government Code section 11343.4 (Register 2007, No. 35).
17. New subsection (m) and amendment of NOTE filed 4-30-2008; operative 4-30-2008 pursuant to Government Code section 11343.4 (Register 2008, No. 18).

Article 8. New Construction and Modernization Grant Determinations

§ 1859.70. General.

A district seeking New Construction or Modernization funding shall complete and file Form SAB 50-04, concurrently or after completing the applicable requirements in Sections 1859.20 and 1859.40. The Board shall only provide New Construction funding if the Approved Application was received by the OPSC prior to the date of Occupancy for any classrooms included in the construction contract. After the date of Occupancy of any classroom in the construction contract, a district will be ineligible to seek New Construction funding and the classrooms will be reduced from the baseline eligibility pursuant to Section 1859.51(i) if not previously reduced.

A district affected by a reorganization election on or after November 4, 1998 may not file an application for New Construction funding after the notification of the reorganization election until a new calculation of the district's baseline eligibility has been determined on the Form SAB 50-03, or the district certifies that the reorganization election will not result in a loss of eligibility for the project for which the district is requesting new construction grants.

A district that is newly created as a result of a reorganization election may file an application for funding after approval of the election has been made by the State Board of Education.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.10, 17071.75, 17072.10 and 17074.10, Education Code.

HISTORY

1. New article 8 (sections 1859.70-1859.79.2) and section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New article 8 (sections 1859.70-1859.79.2) and section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. Amendment filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.
4. New article 8 (sections 1859.70-1859.72) and section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
6. Certificate of Compliance as to 7-12-99 order, including further amendments, transmitted to OAL 11-5-99 and filed 12-22-99 (Register 99, No. 52).
7. Amendment of section and NOTE filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
8. Amendment filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
10. Amendment of first and second paragraphs filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
11. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
12. Amendment of first paragraph filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).
13. Amendment of first paragraph filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).
14. Amendment filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).
15. Amendment of first paragraph filed 5-2-2002; operative 6-1-2002 (Register 2002, No. 18).
16. Amendment of first paragraph filed 8-12-2002 as an emergency; operative 8-12-2002 (Register 2002, No. 33). A Certificate of Compliance must be transmitted to OAL by 12-10-2002 or emergency language will be repealed by operation of law on the following day.
17. Amendment of first and second paragraphs filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by

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11–4–2003 or emergency language will be repealed by operation of law on the following day.

18. Certificate of Compliance as to 8–12–2002 order transmitted to OAL 12–3–2002 and filed 1–16–2003 (Register 2003, No. 3).
19. Certificate of Compliance as to 11–4–2002 order transmitted to OAL 11–4–2003 and filed 12–19–2003 (Register 2003, No. 51).
20. Amendment of first paragraph and amendment of NOTE filed 7–22–2004 as an emergency; operative 7–22–2004 (Register 2004, No. 30). A Certificate of Compliance must be transmitted to OAL by 11–19–2004 or emergency language will be repealed by operation of law on the following day.
21. Certificate of Compliance as to 7–22–2004 order transmitted to OAL 11–12–2004 and filed 12–16–2004 (Register 2004, No. 51).
22. Amendment of first paragraph filed 5–15–2006 as an emergency; operative 5–15–2006 (Register 2006, No. 20). A Certificate of Compliance must be transmitted to OAL by 9–12–2006 or emergency language will be repealed by operation of law on the following day.
23. Certificate of Compliance as to 5–15–2006 order transmitted to OAL 7–19–2006 and filed 8–11–2006 (Register 2006, No. 32).

§ 1859.70.1. Available Funding for Energy Efficiency.

(a) The Board shall set aside $20 million pursuant to Education Code Section 100620(e) and $20 million pursuant to Education Code Section 100820(e) for energy conservation adjustments authorized by Education Code Section 17077.35. The $20 million from each set aside shall be transferred to the Energy Efficiency Account from the following sources:

(1) The funds made available by Education Code Section 100620(a)(1) and 100820(a)(1), as appropriate.

(2) The funds made available by Education Code Section 100620(a)(2) and 100820(a)(2), as appropriate.

(b) The funds from each set aside in (a) shall be apportioned for either of the following:

(1) New Construction Additional Grants for Energy Efficiency authorized by Section 1859.71.3.

(2) Modernization Additional Grants for Energy Efficiency authorized by Section 1859.78.5.

If the Board makes a finding that the funds are not needed for the purposes of Sections 1859.71.3 or 1859.78.5, the Board shall transfer the funds back to the original funding source(s) identified in (a)(1) and (a)(2) above.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17077.35, 100620 and 100820, Education Code.

HISTORY

1. New section filed 11–4–2002 as an emergency; operative 11–4–2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11–4–2003 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 11–4–2002 order transmitted to OAL 11–4–2003 and filed 12–19–2003 (Register 2003, No. 51).
3. Amendment filed 8–21–2006 as an emergency; operative 8–21–2006 (Register 2006, No. 34). A Certificate of Compliance must be transmitted to OAL by 12–19–2006 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 8–21–2006 order transmitted to OAL 11–9–2006 and filed 12–18–2006 (Register 2006, No. 51).

§ 1859.70.2. Funding of Previously Ineligible Projects.

For any classrooms that were previously ineligible for State funding due to the construction contract being signed more than 180 days prior to the submission of the Approved Application, the district may request funding for the project if all the following conditions are met:

(a) The Approved Application for funding must be filed with the OPSC no later than 120 days after this proposed regulation is in effect; and,

(b) The Approved Application meets all requirements of Chapter 12.5, the Leroy F. Greene School Facilities Act of 1998; and,

(c) The contract for the lease, lease–purchase, purchase or construction has been signed on or after January 1, 2000; and,

(d) The grants for the projects funded pursuant to this Section shall be limited to actual eligible expenditures and the funding provided will be calculated based on the grant amounts at the time the construction contract was signed. The project will not be eligible to receive project savings as provided for in Section 1859.103; and,

(e) The district has new construction eligibility for the project. If the capacity of the project is included in the district's baseline, the district may exclude the capacity from its existing school building capacity for purposes of determining eligibility for this project; and,

(f) All project approvals required for a new construction funding application were obtained prior to the construction contract date.

If the Approved Application meets all criteria except (f) above, the district may request a case–by–case approval from the Board.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.10, 17071.75, 17072.10 and 17072.20, Education Code.

HISTORY

1. New section filed 7–22–2004 as an emergency; operative 7–22–2004 (Register 2004, No. 30). A Certificate of Compliance must be transmitted to OAL by 11–19–2004 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 7–22–2004 order transmitted to OAL 11–12–2004 and filed 12–16–2004 (Register 2004, No. 51).

§ 1859.70.3. Available Funding for the Small High School Program.

For purposes of the Small High School Program, the Board shall set aside the funding as follows:

(a) $20 million for the new construction of Small High Schools pursuant to Education Code Section 17072.10(c).

(b) $5 million in modernization funding to assist with the Reconfiguration of large high schools pursuant to Education Code Section 17074.32.

Pursuant to Education Code Section 101012(a)(5), the Board may provide up to $200 million for the purposes set forth in Education Code Sections 17072.10(c) and 17074.32.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17072.10, 17074.32 and 101012(a)(5), Education Code.

HISTORY

1. New section filed 3–14–2006; operative 3–14–2006 pursuant to Government Code section 11343.4 (Register 2006, No. 11).
2. Amendment of subsection (b) and NOTE filed 5–17–2007; operative 5–17–2007 pursuant to Government Code section 11343.4 (Register 2007, No. 20).

§ 1859.70.4. Available Funding for High Performance.

The Board shall set aside $100 million pursuant to Education Code Section 101012(a)(8) for the costs of designs and materials that promote in new construction and modernization projects, the efficient use of energy and water, the maximum use of natural lighting and indoor air quality, the use of recycled materials and materials that emit a minimum of toxic substances, the use of acoustics conducive to teaching and learning and other characteristics of high performance schools.

NOTE: Authority cited: Sections 17070.35 and 101012, Education Code. Reference: Section 101012(a)(8), Education Code.

HISTORY

1. New section filed 5–17–2007; operative 5–17–2007 pursuant to Government Code section 11343.4 (Register 2007, No. 20).

§ 1859.71. Adjustment to the New Construction Grant.

The new construction per–unhoused–pupil grant amount, as provided by Education Code Section 17072.10(a), will be adjusted annually based on the change in the Class B Construction Cost Index as approved by the Board each January. The base Class B Construction Cost Index shall be 1.30 and the first adjustment shall be January, 1999.

The new construction per unhoused–pupil grant amount, as provided by Education Code Section 17072.10(a), may be increased by an additional amount not to exceed six percent in a fiscal year, or decreased, based on the analysis of the current cost to build schools as reported on the Project Information Worksheet (New 09/07) which shall be submitted with the Forms SAB 50–05 and 50–06 and as approved by the Board.

For any changes or additions to the regulations adopted by the Board in 1999, those changes shall be adjusted in accordance with this Section at the time the regulations are adopted.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17072.10 and 17072.11, Education Code.

HISTORY

1. New section filed 12–3–98 as an emergency; operative 12–3–98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4–2–99

or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3–31–99 as an emergency; operative 3–31–99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7–29–99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7–29–99 as an emergency; operative 7–29–99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11–26–99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7–29–99 order, including amendment of section, transmitted to OAL 8–26–99 and filed 10–8–99 (Register 99, No. 41).
5. Amendment of first paragraph filed 11–4–2002 as an emergency; operative 11–4–2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11–4–2003 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 11–4–2002 order transmitted to OAL 11–4–2003 and filed 12–19–2003 (Register 2003, No. 51).
7. Amendment of section, new Project Information Worksheet (incorporated by reference) and amendment of NOTE filed 7–10–2008; operative 7–10–2008 pursuant to Government Code section 11343.4 (Register 2008, No. 28).

§ 1859.71.1. New Construction Grant for Individuals with Exceptional Needs.

In lieu of the funding provided in Subdivision (a) of Education Code Section 17072.10, the Board shall provide the following amounts for each pupil included in an approved project for new construction funding:

(a) $16,573 for each pupil that is a Severely Disabled Individual with Exceptional Needs.

(b) $11,084 for each pupil that is a Non–Severely Disabled Individual with Exceptional Needs.

The amounts shown shall be adjusted annually in the manner prescribed in Section 1859.71. The grant is eligible for any new construction grant augmentation for which the project is otherwise eligible under the law and regulations.

NOTE: Authority cited: Sections 17070.35, 17072.10 and 17074.10, Education Code. Reference: Sections 17072.10 and 17074.10, Education Code.

HISTORY

1. New section filed 7–17–2000 as an emergency; operative 7–17–2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11–14–2000 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 7–17–2000 order transmitted to OAL 11–9–2000 and filed 12–27–2000 (Register 2000, No. 52).
3. Amendment of section heading and first and last paragraphs filed 1–2–2001 as an emergency; operative 1–2–2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5–2–2001 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 1–2–2001 order transmitted to OAL 5–1–2001 and filed 6–13–2001 (Register 2001, No. 24).
5. Amendment of section heading and first and last paragraphs filed 11–4–2002 as an emergency; operative 11–4–2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11–4–2003 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 11–4–2002 order transmitted to OAL 11–4–2003 and filed 12–19–2003 (Register 2003, No. 51).

§ 1859.71.2. New Construction Additional Grant for Fire Code Requirements.

(a) In addition to any other funding authorized by these Regulations, the Board shall provide the following grant amounts for each pupil included in an application for new construction if the project includes an automatic fire detection and alarm system as described in Education Code Section 17074.52:

(1) $7.12 for each elementary school pupil.

(2) $9.79 for each middle school pupil.

(3) $16.03 for each high school pupil.

(4) $20.42 for each pupil that is a Severely Disabled Individual with Exceptional Needs.

(5) $30.41 for each pupil that is a Non–Severely Disabled Individual with Exceptional Needs.

(b) In addition to the funding provided by Subdivision (a) of Education Code Section 17072.10 and Section 1859.71.1, the Board shall provide the following grant amounts for each pupil included in an application for new construction if the project includes an automatic sprinkler system as required in Education Code Section 17074.52:

(1) $98.83 for each elementary school pupil.

(2) $117.53 for each middle school pupil.

(3) $121.98 for each high school pupil.

(4) $209.77 for each pupil that is a Severely Disabled Individual with Exceptional Needs.

(5) $312.40 for each pupil that is a Non–Severely Disabled Individual with Exceptional Needs.

(c) Pursuant to Subdivision (c) of Education Code Section 17074.56, the Board shall provide the grant amounts shown in (a) and (b) above, if applicable, in addition to any other funding authorized by these Regulations, for each pupil included in an application for new construction if all the following criteria are met:

(1) The final plans for the new construction project were submitted to the Division of the State Architect for review and approval between September 1, 2001 and June 30, 2002.

(2) The final plans for the new construction project included an automatic fire detection and alarm system and/or an automatic sprinkler system as described in Education Code Section 17074.52 or the project will include the system(s) prior to the completion of the project.

(3) The new construction project did not receive the entire New Construction Adjusted Grant apportionment by June 30, 2002.

The amounts shown in (a) and (b) above shall be adjusted annually in the manner prescribed in Section 1859.71.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17074.50, 17074.52, 17074.54 and 17074.56, Education Code.

HISTORY

1. New section filed 8–12–2002 as an emergency; operative 8–12–2002 (Register 2002, No. 33). A Certificate of Compliance must be transmitted to OAL by 12–10–2002 or emergency language will be repealed by operation of law on the following day.
2. Amendment of subsections (a) and (c) filed 11–4–2002 as an emergency; operative 11–4–2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11–4–2003 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 8–12–2002 order, including amendment of subsection (c), transmitted to OAL 12–3–2002 and filed 1–16–2003 (Register 2003, No. 3).
4. Certificate of Compliance as to 11–4–2002 order transmitted to OAL 11–4–2003 and filed 12–19–2003 (Register 2003, No. 51).
5. Amendment of subsections (a)(1)–(5) and (b)(1)–(5) filed 11–4–2004; operative 11–4–2004 pursuant to Government Code section 11343.4 (Register 2004, No. 45).

§ 1859.71.3. New Construction Additional Grant for Energy Efficiency.

(a) In addition to any other funding authorized by these Regulations, the Board shall provide the grant amounts identified in (b) if all the following are met:

(1) The project includes energy efficiency components that conform to Subdivision (b) of Education Code Section 17077.35.

(2) The average energy efficiency score of all the buildings in the project, as determined by EnergyPro 3.1 or a similar computer program approved by the State Energy Resources Conservation and Development Commission, exceeds the nonresidential building energy efficiency standards specified in Part 6 of Title 24 of the California Code of Regulations by at least 15 percent.

(3) The DSA has reviewed the proposed project and concurs with the percentage of energy efficiency that exceeds the nonresidential building energy efficiency standards specified in Part 6 of Title 24 of the California Code of Regulations.

(4) No portion of the project will be funded with funds made available from the Renewable Energy Program administered by the State Energy Resources Conservation and Development Commission.

(5) There are funds remaining in the Energy Efficiency Fund as prescribed in Section 1859.70.1 to apportion some or the entire additional grant provided in (b).

(b) An amount equal to the lesser of the following:

(1) The New Construction Grant multiplied by one percent if the percentage of energy efficiency as concurred by the DSA in (a)(3) is 15 percent, or by one percent plus 0.04 percent for each 0.1 percent increment of increased energy efficiency up to 25 percent. The multiplier may not exceed five percent.

(2) The funds available in the Energy Efficiency Account set aside for this Section.

If there are no funds remaining in the Energy Efficiency Account or the funds remaining in the Energy Efficiency Account are insufficient to fully fund the additional grant authorized in (b)(1), the district may either withdraw its application and resubmit it when additional funds are available in the Energy Efficiency Account or continue with the new construction project and accept a full and final apportionment without the additional grant authorized by (b)(1) or the lesser apportionment authorized by (b)(2).

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17077.35, Education Code.

HISTORY

1. New section filed 11–4–2002 as an emergency; operative 11–4–2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11–4–2003 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 11–4–2002 order transmitted to OAL 11–4–2003 and filed 12–19–2003 (Register 2003, No. 51).
3. Amendment of subsections (a)(2) and (b)(1) and repealer of subsections (b)(1)(A)–(E) filed 2–28–2005; operative 2–28–2005 pursuant to Government Code section 11343.4 (Register 2005, No. 9).
4. Amendment of subsections (a)(2) and (a)(4) filed 8–21–2006 as an emergency; operative 8–21–2006 (Register 2006, No. 34). A Certificate of Compliance must be transmitted to OAL by 12–19–2006 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 8–21–2006 order transmitted to OAL 11–9–2006 and filed 12–18–2006 (Register 2006, No. 51).

§ 1859.71.4. New Construction Pupil Grant Increase for Labor Compliance Program.

(a) After determining all other funding authorized by these Regulations, the Board shall increase the per–unhoused–pupil grant amount by 50 percent of the following calculation for any project for which the district is required under Labor Code Section 1771.7(a) and (b) to initiate and enforce a LCP:

(1) Using the chart in (b) of this Section, determine the total amount of funding to be provided for the increased costs of a new construction project due to the initiation and enforcement of a LCP.

(2) Divide the amount determined in subsection (a)(1) by the total number of pupils, or by one if no pupils are assigned, in the approved application.

(b) The funding provided for a new construction project to initiate and enforce a LCP shall be calculated on the total project cost, exclusive of site acquisition costs, as follows:

$16,000	For the first $1 million or any part thereof, plus
1.6 percent	Of the next $1 million or any part thereof, plus
0.25 percent	Of the next $1 million or any part thereof, plus
0.15 percent	Of the next $1 million or any part thereof, plus
0.32 percent	Of the next $2 million or any part thereof, plus
0.31 percent	Of the next $2 million or any part thereof, plus
0.46 percent	Of the next $5 million or any part thereof, plus
0.44 percent	Of the next $5 million or any part thereof, plus
0.42 percent	Of the next $30 million or any part thereof, plus
0.4 percent	Of any remaining portion

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17072.10, Education Code;.

HISTORY

1. New section filed 12–20–2004 as an emergency; operative 12–20–2004 (Register 2004, No. 52). A Certificate of Compliance must be transmitted to OAL by 4–19–2005 or emergency language will be repealed by operation of law on the following day. For prior history, see Register 2004, No. 9.
2. Certificate of Compliance as to 12–20–2004 order transmitted to OAL 4–19–2005 and filed 5–12–2005 (Register 2005, No. 19).

§ 1859.71.5. New Construction Grant Increase for the Small High School Program.

The Board shall provide an increase of 20 percent to the per–pupil grant as identified in Section 1859.70.3(a), for projects receiving funding under the Small High School Program pursuant to Sections 1859.93.2 and 1859.93.3, and shall provide an increase, as appropriate, to any other funding authorized by these Regulations to ensure that the Apportionment represents 60 percent of the total project cost.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17072.10, Education Code.

HISTORY

1. New section filed 3–14–2006; operative 3–14–2006 pursuant to Government Code section 11343.4 (Register 2006, No. 11).

§ 1859.71.6. New Construction Additional Grant for High Performance Incentive.

(a) In addition to any other funding authorized by these Regulations, the Board shall provide the grant amounts identified in Subsection (b) if all the following are met:

(1) The project includes all the prerequisites in each of the five HPRC to include Sustainable Sites, Water, Energy, Materials and Indoor Environmental Quality and related subcategory credits.

(2) Once the prerequisites in (a)(1) have been met, the district may select the criteria and credits it wishes to pursue to determine point award. Category, criteria and associated points are as follows:

(A) Sustainable Sites.

1. Site Selection:

a. Code compliance equals prerequisite.

b. Environmentally sensitive land equals one point;

c. Greenfields equals one point;

d. Central location equals one point;

e. Joint–use of facilities equals one point;

f. Joint–use of parks equals one point;

g. Reduced footprint equals one point.

2. Transportation:

a. Public transportation equals one point;

b. Bicycles equals one point;

c. Minimize parking equals one point.

3. Stormwater Management:

a. Construction site runoff control equals prerequisite.

b. Limit stormwater runoff equals one point;

c. Treat stormwater runoff equals one point.

4. Outdoor Surfaces:

a. Reduce heat islands — landscaping equals one point;

b. Reduce heat islands — cool roofs equals one point.

5. Outdoor lighting: light pollution reduction equals one point.

(B) Water.

1. Outdoor Systems:

a. Create water use budget equals prerequisite.

b. Reduce potable water for landscaping equals one to two points.

2. Indoor Systems:

a. Reduce sewage conveyance from toilets equals one point;

b. Reduce indoor potable water use equals one to two points.

(C) Energy.

1. Energy Efficiency:

a. Minimum energy performance equals prerequisite.

b. Superior energy performance equals one to 13 points;

c. Natural ventilation equals one point;

d. Energy management system equals one point.

2. Alternate Energy Sources: Renewable energy equals one to seven points; one point for each five percent of the site's annual power consumption that is produced on site not to exceed 35 percent.

3. Commissioning and Training:

a. Fundamental building systems testing and training equals prerequisite.

b. Enhanced commissioning equals one to two points.

(D) Materials

1. Recycling: Storage and collection of recyclables equals prerequisite.

2. Construction Waste Management:

a. Construction waste management equals prerequisite.

b. Construction waste management at 75 percent or above diverted equals one to two points.

3. Building Reuse:

a. Reuse of structure or shell equals one to two points;

b. Reuse of interior partitions equals one point.

4. Sustainable Materials:

a. Recycled content equals one to two points;

b. Rapidly renewable materials equals one point;

c. Organically grown materials equals one point;

d. Certified wood equals one point;

e. Salvaged materials equals one to two points.

f. Alternative: environmentally preferable products in lieu of a. through e. above equals one to seven points.

(E) Indoor Environmental Quality.

1. Lighting and Daylighting:

a. Daylighting equals one to four points;

b. View windows equals one point;

c. Electric lighting equals one point.

2. Indoor Air Quality:

a. Minimum requirements equals prerequisite.

b. Thermal displacement ventilation equals two points;

c. Low–emitting materials equals one to four points;

d. Chemical and pollutant source control equals one point;

e. Ducted returns equals one point;

f. Filtration equals one point.

3. Acoustics:

a. Minimum acoustical performance equals prerequisite.

b. Improved acoustical performance equals one to three points.

4. Thermal Comfort:

a. American Society of Heating, Refrigerating and Air–Conditioning Engineers 55 code compliance equals prerequisite.

b. Controllability of systems equals one to two points.

(3) A minimum of four points must come from either (a)(2)(C)1.b. and/or 2.

(4) The project, which includes a complete set of plans, must be submitted to and accepted by the DSA on or after May 20, 2006.

(5) The DSA has reviewed the proposed project and concurs with the points specified in the HPRC.

(6) The project will not receive funding from the Energy Efficiency Account.

(7) For those projects accepted by the DSA prior to October 1, 2007, districts may utilize the *CHPS Best Practices Manual Volume III 2002 Edition*, and the point standard will be in the range of 23 to 72 points. All prerequisites, credits and points obtained must be based on the *2002 Edition* requirements. Criteria and associated prerequisite or points as indicated in (a)(2)(D)2.a. and 4.c. and f. and (E)1.c. and 2.b. and district resolutions are ineligible, and (a)(3) is optional.

(b) To determine the High Performance Incentive grant, multiply the New Construction Grant by the percentage allowance in accordance with the eligible high performance points as follows:

(1) For those projects accepted by the DSA prior to October 1, 2007, pursuant to (a)(7), in which the level of high performance attained, as concurred by the DSA, is a minimum of 23 points, the New Construction Grant will be multiplied by:

(A) Two percent at 23 points plus 0.03 percent for each point attained from 24 through 33 points; or

(B) 2.35 percent at 34 points plus 0.24 percent for each point attained from 35 through 40 points; or

(C) Four percent at 41 points plus 0.36 percent for each point attained from 42 through 54 points; or

(D) 9.05 percent at 55 points plus 0.060 percent for each point attained from 56 through 72 points.

(2) For those projects accepted by the DSA utilizing the *CHPS Best Practices Manual Volume III 2006 Edition*, in which the level of high performance attained as concurred by the DSA is a minimum of 27 points, the New Construction Grant will be multiplied by:

(A) Two percent at 27 points plus 0.050 percent for each point attained from 28 through 33 points; or

(B) 2.35 percent at 34 points plus 0.24 percent for each point attained from 35 through 40 points; or

(C) four percent at 41 points plus 0.36 percent for each point attained from 42 through 54 points; or

(D) 9.05 percent at 55 points plus 0.060 percent for each point attained from 56 through 75 points.

If there are no funds remaining in the High Performance School Account or the funds remaining are insufficient to fully fund the additional grant authorized in Subsection (b), the district may either withdraw its application and resubmit it should additional funds be made available in the High Performance School Account or continue with the new construction project and accept a full and final apportionment without the additional grant authorized by Subsection (b).

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 101012(a)(8), Education Code.

HISTORY

1. New section filed 10–1–2007; operative 10–1–2007 pursuant to Government Code section 11343.4 (Register 2007, No. 40).

§ 1859.72. New Construction Additional Grant for an Individual with Exceptional Needs.

In addition to any other funding authorized by these Regulations, the Board shall provide an additional grant for the area of therapy rooms used by pupils that are Severely Disabled Individuals with Exceptional Needs. The district may request funding for therapy area, not to exceed 3,000 square feet, plus 750 square feet per additional Special Day Class classroom needed for Severely Disabled Individuals with Exceptional Needs. The amount shall be determined by multiplying the eligible square feet by $173.30 per square foot for Toilet Facilities and $96.30 per square foot for all other facilities. The amounts shown shall be adjusted annually in the manner prescribed in Section 1859.71.

NOTE: Authority cited: Sections 17070.35 and 17072.10, Education Code. Reference: Sections 17072.10, 17072.15, 17072.25, 17074.56 and 56026, Education Code.

HISTORY

1. New section filed 12–3–98 as an emergency; operative 12–3–98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4–2–99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3–31–99 as an emergency; operative 3–31–99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7–29–99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7–29–99 as an emergency; operative 7–29–99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11–26–99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7–29–99 order transmitted to OAL 8–26–99 and filed 10–8–99 (Register 99, No. 41).
5. Amendment of section and NOTE filed 7–17–2000 as an emergency; operative 7–17–2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11–14–2000 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 7–17–2000 order transmitted to OAL 11–9–2000 and filed 12–27–2000 (Register 2000, No. 52).
7. Amendment of section heading and section filed 1–2–2001 as an emergency; operative 1–2–2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5–2–2001 or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 1–2–2001 order transmitted to OAL 5–1–2001 and filed 6–13–2001 (Register 2001, No. 24).
9. Amendment of section and NOTE filed 8–12–2002 as an emergency; operative 8–12–2002 (Register 2002, No. 33). A Certificate of Compliance must be transmitted to OAL by 12–10–2002 or emergency language will be repealed by operation of law on the following day.
10. Amendment filed 11–4–2002 as an emergency; operative 11–4–2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11–4–2003 or emergency language will be repealed by operation of law on the following day.

11. Certificate of Compliance as to 8–12–2002 order transmitted to OAL 12–3–2002 and filed 1–16–2003 (Register 2003, No. 3).
12. Certificate of Compliance as to 11–4–2002 order transmitted to OAL 11–4–2003 and filed 12–19–2003 (Register 2003, No. 51).

§ 1859.73. New Construction Additional Grant for Multilevel Construction.

In addition to any other funding authorized by these Regulations, the Board shall provide an additional grant for the additional costs resulting from the need to build multilevel facilities. The additional funding is determined by multiplying the New Construction Grant by 12 percent for each pupil housed in a multilevel building that will house pupils in all levels of the building if the useable site acreage for the project is less than 75 percent of the site size recommended by the CDE for the master planned project capacity.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17072.10, Education Code.

HISTORY

1. New section filed 12–3–98 as an emergency; operative 12–3–98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4–2–99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3–31–99 as an emergency; operative 3–31–99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7–29–99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7–29–99 as an emergency; operative 7–29–99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11–26–99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7–29–99 order, including amendment of section, transmitted to OAL 8–26–99 and filed 10–8–99 (Register 99, No. 41).
5. Amendment of section heading and section filed 11–4–2002 as an emergency; operative 11–4–2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11–4–2003 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 11–4–2002 order transmitted to OAL 11–4–2003 and filed 12–19–2003 (Register 2003, No. 51).

§ 1859.73.1. New Construction Additional Grant for Project Assistance.

Excluding Joint–Use Projects, the Board shall provide, in addition to any other funding authorized by these Regulations, $3,750 for Small School Districts for the cost necessary for project assistance.

For Type II Joint–Use Projects, not part of a qualifying SFP Modernization project, the Board shall provide, in addition to any other funding authorized by these Regulations, $3,750 for Small School Districts for the cost necessary for project assistance.

The amount(s) shown will be adjusted annually based on the change in the Class B Construction Cost Index as approved by the Board each January. The base Class B Construction Cost Index shall be 1.37 and the first adjustment shall be January 2001.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17072.10, Education Code.

HISTORY

1. New section filed 6–26–2000; operative 6–26–2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
2. Amendment of second paragraph filed 7–17–2000 as an emergency; operative 7–17–2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11–14–2000 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 7–17–2000 order transmitted to OAL 11–9–2000 and filed 12–27–2000 (Register 2000, No. 52).
4. Amendment of section heading and last paragraph filed 1–2–2001 as an emergency; operative 1–2–2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5–2–2001 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1–2–2001 order transmitted to OAL 5–1–2001 and filed 6–13–2001 (Register 2001, No. 24).
6. Amendment of second paragraph filed 7–25–2001; operative 7–25–2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).
7. Amendment of second paragraph filed 8–13–2001; operative 8–13–2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).
8. Amendment of second paragraph filed 4–10–2002; operative 4–10–2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).
9. Amendment of last paragraph filed 5–2–2002; operative 6–1–2002 (Register 2002, No. 18).
10. Amendment of last paragraph filed 8–12–2002 as an emergency; operative 8–12–2002 (Register 2002, No. 33). A Certificate of Compliance must be transmitted to OAL by 12–10–2002 or emergency language will be repealed by operation of law on the following day.
11. Amendment filed 11–4–2002 as an emergency; operative 11–4–2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11–4–2003 or emergency language will be repealed by operation of law on the following day.
12. Certificate of Compliance as to 8–12–2002 order transmitted to OAL 12–3–2002 and filed 1–16–2003 (Register 2003, No. 3).
13. Certificate of Compliance as to 11–4–2002 order transmitted to OAL 11–4–2003 and filed 12–19–2003 (Register 2003, No. 51).
14. Amendment of second paragraph filed 5–21–2004 as an emergency; operative 5–21–2004 (Register 2004, No. 21). A Certificate of Compliance must be transmitted to OAL by 9–20–2004 or emergency language will be repealed by operation of law on the following day.
15. Certificate of Compliance as to 5–21–2004 order transmitted to OAL 9–20–2004 and filed 11–2–2004 (Register 2004, No. 45).

§ 1859.73.2. New Construction Additional Grant for Replaced Facilities.

(a) In addition to any other funding authorized by these Regulations, the Board shall provide funding for the amount(s) in (b) below for the replacement cost of single–story building(s) that are demolished at a school and replaced with multistory building(s) in order to increase pupil capacity of that school if all the following conditions are met:

(1) The site size as determined by the CDE for the existing capacity of the school is less than 75 percent of the recommended CDE site size.

(2) The pupil capacity of the school must be increased by at least the greater of (A) or (B) below:

(A) Twenty percent of the existing permanent single–story pupil capacity (before replacement) of the school. Existing permanent single–story pupil capacity shall be determined by multiplying classrooms contained within single–story permanent buildings intended for grades kindergarten through six by 25, classrooms intended for grades seven through 12 by 27, classrooms intended for Non–Severely Disabled Individuals with Exceptional Needs by 13 and classrooms intended for Severely Disabled Individuals with Exceptional Needs by nine. Classrooms shall not include any classrooms reduced from the Gross Classroom Inventory pursuant to Section 1859.32.

(B) 200 pupils.

(3) The sum of (A) and (B) below is less than the sum of (E) and (F) below:

(A) Determine the estimated cost of demolition of the single–story building(s) to be replaced. The cost estimate shall be subject to review by the OPSC for conformance with the Saylor Current Cost Publication.

(B) Multiply the total square footage of the proposed multistory replacement building(s) by the Current Replacement Cost.

(C) Multiply the pupil capacity as determined in (a)(2) by .01775 for K–6, .021 for 7–8 and .02472 for 9–12. For purposes of this calculation, assign Severely Disabled Individuals with Exceptional Needs and Non–Severely Disabled Individuals with Exceptional Needs pupil grants requested on Form SAB 50–04 as either K–6, 7–8 or 9–12 based on the type of project selected by the district on Form SAB 50–04.

(D) Determine the average value of land per acre as follows:

1. Previous actual site acquisition costs within the district's boundaries. If unable to reference prior OPSC–reviewed and approved projects at the time of application submittal, the district should submit documentation for review that complies with Section 1859.74.

2. Applications submitted with a separate certification letter, signed by the authorized district representative, certifying there are no site acquisitions as required in 1. above, must use one of the following calculation methods:

a. A complete appraisal or a preliminary appraisal of property in the General Location of the school site made or updated within six months from the Approved Application submittal date to the OPSC, using the

guidelines outlined in Section 1859.74.1. The preliminary appraisal may be made without access to the property.

b. The Median Cost of an acre of land in the General Location of the school site using historical information from the General Location. Historical information that may be considered to determine land cost shall include prior real estate sales consummated and documented by the county recorder or pending real estate sales documented by a title insurance company's escrow instructions. For purposes of historical information, include all real estate sales consummated and documented by the county recorder for a minimum of six months and a maximum of up to two years prior to the date the Approved Application was submitted to the OPSC. Relocation expenses, for this method, will be calculated based upon OPSC historical data.

(E) Multiply the sums of the products determined in (C) above by the average value of land per acre determined in (D) above.

(F) Multiply the square footage of this single-story building(s) to be replaced by the Current Replacement Cost, then subtract this product from the amount determined in (a)(3)(B) above.

(4) The CDE has determined that the replacement of the single-story building(s) on the existing site with multistory building(s) would be the best available alternative and will not create a school with an inappropriate number of pupils in relation to the size of the site.

(5) The single-story building(s) to be replaced on the existing site may not be leased facilities and/or classrooms excluded pursuant to Education Code Section 17071.30(b). Portable classrooms that were included in the classroom capacity as identified on Line 1, Part III, of the Form SAB 50-02 may be replaced.

(6) With the exception of portables acquired with Class Size Reduction funds, the single-story building(s) to be replaced on the site may not have been funded for either new construction or modernization with funds from Proposition 1A or subsequent SFP bonds.

(b) If the criteria in (a) are met, the additional funding is determined by multiplying $173.30 per square foot for Toilet Facilities and by $96.30 per square foot for all other facilities included in the single-story building(s) to be replaced adjusted for the following:

(1) The amounts shall be adjusted in the manner prescribed in Section 1859.71.

(2) The amounts shall be increased by the percentage authorized in Section 1859.73, as appropriate.

The district is eligible for site development in accordance with Section 1859.76 including the demolition of the replacement structures as part of the SFP project.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17071.46 and 17074.56, Education Code.

HISTORY

1. New section filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).
2. Amendment of subsection (a)(4)(C) filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).
3. Amendment of subsection (a)(4)(C) filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).
4. Amendment of subsection (a)(4)(C) filed 5-2-2002; operative 6-1-2002 (Register 2002, No. 18).
5. Amendment of subsections (a)(4)(C) and (b) and amendment of NOTE filed 8-12-2002 as an emergency; operative 8-12-2002 (Register 2002, No. 33). A Certificate of Compliance must be transmitted to OAL by 12-10-2002 or emergency language will be repealed by operation of law on the following day.
6. Amendment of section heading and section filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 8-12-2002 order transmitted to OAL 12-3-2002 and filed 1-16-2003 (Register 2003, No. 3).
8. Amendment of subsection (b)(1) filed 8-25-2003 as an emergency; operative 8-25-2003 (Register 2003, No. 35). A Certificate of Compliance must be transmitted to OAL by 12-23-2003 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 11-4-2002 order transmitted to OAL 11-4-2003 and filed 12-19-2003 (Register 2003, No. 51).
10. Reinstatement of section as it existed prior to 8-25-2003 emergency amendment by operation of Government Code section 11346.1(f) (Register 2004, No. 9).
11. Amendment of subsection (b)(1) filed 12-20-2004 as an emergency; operative 12-20-2004 (Register 2004, No. 52). A Certificate of Compliance must be transmitted to OAL by 4-19-2005 or emergency language will be repealed by operation of law on the following day.
12. Amendment filed 3-2-2005; operative 3-2-2005 pursuant to Government Code section 11343.4 (Register 2005, No. 9).
13. Certificate of Compliance as to 12-20-2004 order transmitted to OAL 4-19-2005 and filed 5-12-2005 (Register 2005, No. 19).
14. Amendment of subsections (a)(2)(A) and (a)(5) filed 11-3-2006; operative 11-3-2006 pursuant to Government Code section 11343.4 (Register 2006, No. 44).

§ 1859.74. New Construction Additional Grant for Site Acquisition Cost.

With the exception of projects that received site acquisition funds under the LPP or projects that qualify for site acquisition funds under Section 1859.74.5, the Board shall provide funding, in addition to any other funding authorized by these Regulations, for the lesser of one half of the actual cost of the site or one-half of the appraised value of the site acquired as described in (a) and (b) of this Section.

(a) Actual Site Cost

The actual cost of the site shall be the purchase price as shown on the escrow documents or other appropriate documents such as court orders in condemnation or as specifically identified in agreements when the site is transferred in lieu of other legally required payments or fees due to the district. The actual cost shall be adjusted for the following:

(1) Increased by the approved relocation expenses that conform to Title 25, California Code of Regulations, Section 6000, et seq. The reasonable and necessary relocation costs for purchasing fixtures and equipment, personal property, new machinery/equipment and the installation of any improvements at the replacement residence or business location may be included as relocation assistance.

(2) Increased by four percent of the actual amount determined in (a) above, but not less than $50,000. This amount shall provide an allowance for any appraisal, escrow, survey, site testing, CDE review/approvals and the preparation of the POESA and the PEA.

(3) Increased by the DTSC costs for review, approval, and oversight of the POESA and the PEA.

(b) Appraised Value of the Site

The value determined by an appraisal made or updated no more than six months prior to application submittal to the OPSC for funding. A SFP project which had the site funded as a LPP project shall use the appraised value determined under the LPP. The appraisal may be reviewed by the OPSC for conformance with Section 1859.74.1. The approved appraised value shall be adjusted for the following:

(1) Increased by the approved relocation expenses that conform to Title 25, California Code of Regulations, Section 6000, et seq. The reasonable and necessary relocation costs for purchasing fixtures and equipment, personal property, new machinery/equipment and the installation of any improvements at the replacement residence or business location may be included as relocation assistance.

(2) Increased by four percent of the appraised value determined in (b) above, but not less than $50,000. This amount shall provide an allowance for appraisals, escrow, survey, site testing, CDE review/approvals and the preparation of the POESA and the PEA.

(3) Increased by the DTSC costs for review, approval, and oversight of the POESA and the PEA.

The actual site cost or the appraised value of the site shall be reduced, on a prorated basis, by the percentage of the excess acreage of the site that exceeds the master plan site acreage approved by the CDE.

For the purposes of the Small High School Program, the actual site cost or the appraised value of the site shall be reduced, on a prorated basis, by the amount that exceeds the recommended site size for 500 pupils as determined by the CDE.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17072.10, 17072.12 and 17251, Education Code.

HISTORY

1. New section filed 12–3–98 as an emergency; operative 12–3–98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4–2–99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3–31–99 as an emergency; operative 3–31–99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7–29–99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7–29–99 as an emergency; operative 7–29–99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11–26–99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7–29–99 order, including amendment of section and NOTE, transmitted to OAL 8–26–99 and filed 10–8–99 (Register 99, No. 41).
5. Amendment filed 6–26–2000; operative 6–26–2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
6. Amendment of section heading and first paragraph filed 11–4–2002 as an emergency; operative 11–4–2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11–4–2003 or emergency language will be repealed by operation of law on the following day.
7. Amendment of first paragraph filed 2–6–2003; operative 2–6–2003 pursuant to Government Code section 11343.4 (Register 2003, No. 6).
8. Certificate of Compliance as to 11–4–2002 order transmitted to OAL 11–4–2003 and filed 12–19–2003 (Register 2003, No. 51).
9. New final paragraph and amendment of NOTE filed 3–14–2006; operative 3–14–2006 pursuant to Government Code section 11343.4 (Register 2006, No. 11).

§ 1859.74.1. Site Acquisition Guidelines.

To receive the funding authorized by Section 1859.74, the district must certify on the Form SAB 50–04, that the appraisal of the property was made utilizing the following criteria:

(a) The land improvements and appurtenances, excluding fixtures, equipment and personal property, were appraised in an as is condition with the following exceptions:

(1) The site shall be appraised as if it were a clean site, safe of all toxic contaminants in accordance with CDE guidelines and pursuant to Title 5, California Code of Regulations commencing with Section 14001.

(2) The site valuation included only proposed site improvements associated with grading the site to a mass graded or super pad condition, defined as a site graded to construction readiness without foundation or paving and proposed utilities stubbed to the site. Any proposed site improvements or utilities not covered by a performance bond equal to 100 percent of the estimated cost of the site improvements and utilities must be completed prior to the close of escrow and detailed separately in the report.

(b) Consideration in the appraisal was made for net useable acreage and severance damages.

(c) The district or its legal counsel has contracted for appraisal services.

(d) The appraiser has certified to the district that the appraisal complies with the Uniform Standards of Professional Appraisal Practices as promulgated by the Appraisal Standards Board of the Appraisal Foundation.

(e) The amount of a court award for a site acquired in condemnation may be used in lieu of the appraised value determined in (a) through (d) above, when specifically approved by the Board.

The district shall be required to submit one appraisal. If the application includes a request for financial hardship as provided in Section 1859.81, the OPSC will review the appraisal for conformance with (a), (b), (c) and (d) prior to a recommendation for SFP funding to the Board.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35 and 17072.12, Education Code.

HISTORY

1. New section filed 12–3–98 as an emergency; operative 12–3–98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4–2–99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3–31–99 as an emergency; operative 3–31–99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7–29–99 or emergency language will be repealed by operation of law on the following day.
3. Amendment of first paragraph filed 7–12–99 as an emergency; operative 7–12–99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11–9–99 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 7–29–99 as an emergency; operative 7–29–99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11–26–99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7–29–99 order, including amendment of section, transmitted to OAL 8–26–99 and filed 10–8–99 (Register 99, No. 41).
6. Certificate of Compliance as to 7–12–99 order, including further amendments, transmitted to OAL 11–5–99 and filed 12–22–99 (Register 99, No. 52).
7. Amendment of first paragraph filed 6–26–2000; operative 6–26–2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
8. Amendment of first paragraph filed 7–17–2000 as an emergency; operative 7–17–2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11–14–2000 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 7–17–2000 order transmitted to OAL 11–9–2000 and filed 12–27–2000 (Register 2000, No. 52).
10. Amendment of first paragraph filed 1–2–2001 as an emergency; operative 1–2–2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5–2–2001 or emergency language will be repealed by operation of law on the following day.
11. Certificate of Compliance as to 1–2–2001 order transmitted to OAL 5–1–2001 and filed 6–13–2001 (Register 2001, No. 24).
12. Amendment of first paragraph filed 7–25–2001; operative 7–25–2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).
13. Amendment of first paragraph and subsection (a)(2) filed 8–13–2001; operative 8–13–2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).
14. Amendment of first paragraph filed 4–10–2002; operative 4–10–2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).
15. Amendment of first paragraph filed 5–2–2002; operative 6–1–2002 (Register 2002, No. 18).
16. Amendment of first paragraph filed 8–12–2002 as an emergency; operative 8–12–2002 (Register 2002, No. 33). A Certificate of Compliance must be transmitted to OAL by 12–10–2002 or emergency language will be repealed by operation of law on the following day.
17. Amendment of first paragraph filed 11–4–2002 as an emergency; operative 11–4–2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11–4–2003 or emergency language will be repealed by operation of law on the following day.
18. Certificate of Compliance as to 8–12–2002 order transmitted to OAL 12–3–2002 and filed 1–16–2003 (Register 2003, No. 3).
19. Certificate of Compliance as to 11–4–2002 order transmitted to OAL 11–4–2003 and filed 12–19–2003 (Register 2003, No. 51).

§ 1859.74.2. New Construction Additional Grant for Hazardous Waste Removal.

With the exception of projects that received site acquisition funds under the LPP, the Board shall provide funding, in addition to any other funding authorized by these Regulations for the allowable costs of hazardous materials/waste removal and/or remediation costs. The allowable site costs shall not exceed 50 percent of one and one half times the value of an appraisal that conforms to Section 1859.74.1 for the costs in subsections (a), (a)(1) and (a)(2) plus the additional costs included in (b) and (c). The costs in (b) and (c) are in addition to 50 percent of one and one half times the appraisal value cap:

(a) The costs associated with the site acquisition and to implement the RA as determined necessary in the PEA that has been approved by the DTSC subject to the following:

(1) The costs for preparation of the RA.

(2) The DTSC costs for review and oversight of the preparation and implementation of the RA. The costs may not include continuous operational and maintenance costs associated with the RA.

(b) Fifty percent of the approved relocation expenses that conform to Title 25, Division 1, Chapter 6, Subchapter 1, California Code of Regulations, (Section 6000, et seq.). The reasonable and necessary relocation costs for purchasing fixtures and equipment, personal property, new machinery/equipment and the installation of any improvements at the replacement residence or business location may be included as relocation assistance.

(c) Not less that 50 percent of $50,000 or 50 percent of four percent of the appraised value. This amount shall provide an allowance for any

appraisal, escrow, survey, site testing, CDE review/approvals and the preparation of the POESA and PEA.

(d) The limitation of 50 percent of one and one half times the value of an appraisal for costs in subsections (a), (a)(1), and (a)(2) may be exceeded when the Board finds that unforeseen circumstances exists, and when both of the following exist:

(1) CDE determines that the site is the best available site for meeting the educational and safety needs of the School District.

(2) Substantiation that the costs are limited to the minimum required to complete the evaluation and RA approved by the DTSC.

NOTE: Authority cited: Sections 17070.35 and 17072.13, Education Code. Reference: Sections 17072.12 and 17251, Education Code.

HISTORY

1. New section filed 6–26–2000; operative 6–26–2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
2. Amendment of section heading and first paragraph filed 11–4–2002 as an emergency; operative 11–4–2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11–4–2003 or emergency language will be repealed by operation of law on the following day.
3. Amendment filed 2–27–2003 as an emergency; operative 2–27–2003 (Register 2003, No. 9). A Certificate of Compliance must be transmitted to OAL by 6–27–2003 or emergency language will be repealed by operation of law on the following day.
4. Amendment refiled 6–19–2003 as an emergency; operative 6–19–2003 (Register 2003, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–17–2003 or emergency language will be repealed by operation of law on the following day.
5. Amendment refiled 10–10–2003 as an emergency; operative 10–10–2003 (Register 2003, No. 41). A Certificate of Compliance must be transmitted to OAL by 2–9–2004 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 11–4–2002 order transmitted to OAL 11–4–2003 and filed 12–19–2003 (Register 2003, No. 51).
7. Certificate of Compliance as to 10–10–2003 order transmitted to OAL 2–9–2004 and filed 3–23–2004 (Register 2004, No. 13).

§ 1859.74.3. New Construction Additional Grant for Incidental Site and Hazardous Waste Removal for Leased Sites.

When a district has requested funding on a vacant leased site pursuant to Section 1859.22 that was never used for school purposes and a site evaluation requires a RA, the Board shall provide funding, in addition to any other funding authorized by these Regulations for one and one half times the appraised valuation that conforms to Section 1859.74.1. The allowable site costs shall not exceed 50 percent of one and one half times the value of an appraisal that conforms to Section 1859.74.1 for the costs in subsections (a), (a)(1) and (a)(2) plus the additional costs included in (b) and (c). The costs in (b) and (c) are in addition to 50 percent of one and one half times the appraisal value cap:

(a) The costs associated with the site acquisition and to implement the RA as determined necessary in the PEA that has been approved by the DTSC subject to the following:

(1) The costs for preparation of the RA.

(2) The DTSC costs for review and oversight of the preparation and implementation of the RA. The costs may not include continuous operational and maintenance costs associated with the RA.

(b) Fifty percent of the approved relocation expenses that conform to Title 25, Division 1, Chapter 6, Subchapter 1, California Code of Regulations, (Section 6000, et seq.). The reasonable and necessary relocation costs for purchasing fixtures and equipment, personal property, new machinery/equipment and the installation of any improvements at the replacement residence or business location may be included as relocation assistance.

(c) Not less than 50 percent of $50,000 or 50 percent of four percent of the appraised value. This amount shall provide an allowance for any appraisal, escrow, survey, site testing, CDE review/approvals and the preparation of the POESA and the PEA.

(d) The limitation of 50 percent of one and one half times the value of an appraisal for costs in subsections (a), (a)(1) and (a)(2) may be exceeded when the Board finds that unforeseen circumstances exist, and both of the following exist:

(1) CDE determines that the site is the best available site for meeting the educational and safety needs of the School District.

(2) Substantiation that the costs are limited to the minimum required to complete the evaluation and RA approved by the DTSC.

(e) If the toxics evaluation of the leased site does not require a RA, then the allowable site costs shall not exceed the lesser of one half the appraised or actual purchase price plus the additional amounts provided in Section 1859.74.

The appraised value of the site shall be reduced, on a prorated basis, by the percentage of the excess acreage of the site that exceeds the master plan site acreage approved by the CDE.

NOTE: Authority cited: Sections 17070.35 and 17072.13, Education Code. Reference: Sections 17070.71, 17072.12 and 17251, Education Code.

HISTORY

1. New section filed 7–25–2001; operative 7–25–2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).
2. Amendment of section heading and first paragraph filed 11–4–2002 as an emergency; operative 11–4–2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11–4–2003 or emergency language will be repealed by operation of law on the following day.
3. Amendment of section and NOTE filed 2–27–2003 as an emergency; operative 2–27–2003 (Register 2003, No. 9). A Certificate of Compliance must be transmitted to OAL by 6–27–2003 or emergency language will be repealed by operation of law on the following day.
4. Amendment of section and NOTE refiled 6–19–2003 as an emergency; operative 6–19–2003 (Register 2003, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–17–2003 or emergency language will be repealed by operation of law on the following day.
5. Amendment of section and NOTE refiled 10–10–2003 as an emergency; operative 10–10–2003 (Register 2003, No. 41). A Certificate of Compliance must be transmitted to OAL by 2–9–2004 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 11–4–2002 order transmitted to OAL 11–4–2003 and filed 12–19–2003 (Register 2003, No. 51).
7. Certificate of Compliance as to 10–10–2003 order transmitted to OAL 2–9–2004 and filed 3–23–2004 (Register 2004, No. 13).

§ 1859.74.4. New Construction Additional Grant for Hazardous Waste Removal Required on an Existing School Site.

(a) With the exception of projects that received initial site acquisition funds under the SFP, the Board shall provide an funding, in addition to any other funding authorized by these Regulations for the necessary hazardous waste materials/waste removal and/or remediation costs on an existing school site where the New Construction Grants will be used if all the following are met:

(1) The New Construction Grant request is for additional school facilities on an existing school site.

(2) The New Construction Grant request does not include a funding request for initial site acquisition costs allowed pursuant to Sections 1859.74 or 1859.74.2.

(3) The existing school site where the New Construction Grant will be expended has a functioning school on the site or the site had a closed school that will again be used as a functioning school.

(4) The hazardous material cleanup costs are required by the DTSC.

(b) If all criteria in subsection (a) are met, the allowable hazardous waste removal cleanup costs shall be one half of all the following:

(1) The costs for preparation of the POESA, the PEA and the RA.

(2) The costs to implement the RA as determined necessary in the PEA that has been approved by the DTSC subject to the following:

(A) The costs may include the DTSC costs for review and oversight of the preparation and implementation of the RA.

(B) The costs may not include continuous operational and maintenance costs associated with the RA.

(c) In advance of the New Construction Adjusted Grant, districts performing a RA on additions to existing school sites shall be eligible for the costs associated with evaluation and RA required by the DTSC.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17072.18, Education Code.

HISTORY

1. New section filed 4–10–2002; operative 4–10–2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).
2. Amendment of section heading and first paragraph filed 11–4–2002 as an emergency; operative 11–4–2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11–4–2003 or emergency language will be repealed by operation of law on the following day.
3. New subsection (c) filed 2–27–2003 as an emergency; operative 2–27–2003 (Register 2003, No. 9). A Certificate of Compliance must be transmitted to OAL by 6–27–2003 or emergency language will be repealed by operation of law on the following day.
4. New subsection (c) refiled 6–19–2003 as an emergency; operative 6–19–2003 (Register 2003, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–17–2003 or emergency language will be repealed by operation of law on the following day.
5. Amendment of subsection (c) refiled 10–10–2003 as an emergency; operative 10–10–2003 (Register 2003, No. 41). A Certificate of Compliance must be transmitted to OAL by 2–9–2004 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 11–4–2002 order transmitted to OAL 11–4–2003 and filed 12–19–2003 (Register 2003, No. 51).
7. Certificate of Compliance as to 10–10–2003 order transmitted to OAL 2–9–2004 and filed 3–23–2004 (Register 2004, No. 13).

§ 1859.74.5. New Construction Additional Grant for District–Owned Site Acquisition Cost.

(a) As an alternative to site acquisition funding provided by Sections 1859.74, 1859.74.2, 1859.74.3 and 1859.74.4, the Board shall provide an additional grant, in addition to the funding provided by Subdivision (a) of Education Code Section 17072.10 and Sections 1859.71 and 1859.71.1 for one half of the value of the district–owned site as determined in (b) provided all the following criteria are met:

(1) The site has been owned by the applicant district for a period of at least five years from the date the Approved Application is received by the OPSC. The district may demonstrate ownership of the site by any of the following:

(A) A grant deed.

(B) Escrow closing statement.

(C) Order of immediate possession.

(D) Other evidence satisfactory to the Board.

(2) The district–owned site was not purchased with funds made available from the LPP, the SFP or Proposition 1A.

(3) The district–owned site has been productively used by the applicant district for the entire five–year period immediately proceeding the date the Approved Application is submitted to the OPSC for any of the following:

(A) The applicant's district administrative facility.

(B) A childcare or preschool program operated by the applicant district.

(C) An adult education program operated by the applicant district.

(D) Any other non–school productive use as determined by the Board.

(4) At least 75 percent of the useable acres of the district–owned site contained buildings and/or General Site Development that was used for the entire five year period for the qualifying purpose identified in (a)(3).

(5) The CDE has determined that the district–owned site is not otherwise available as a school site.

(6) The district has completed a cost benefit analysis as described in Section 1859.74.6 which indicates the current estimated value of the district–owned site is less than the current estimated value of an alternative site in the district.

(7) The district–owned site is approvable by the CDE for school purposes.

If all the criteria in items (a)(1) through (a)(7) are met, the OPSC will recommend to the Board that it make a finding that the non–school function on the site must be discontinued or relocated in order to utilize the site as a school site.

A district may request the Board make a finding that the non–school function on the district–owned site must be discontinued or relocated in advance of submittal of a funding application provided it meets all the criteria in (a).

(b) The value of the district–owned site shall be the sum of all the following:

(1) The value of the district–owned site determined by an appraisal made or updated no more than six months prior to submittal of the Approved Application to the OPSC. The appraisal shall include any buildings on the site and shall be made using the guidelines in Section 1859.74.1.

(2) The approved relocation expense of the district–owned site that conform to Title 25, California Code of Regulations, Section 6000, et seq. The reasonable and necessary relocation costs for purchasing fixtures and equipment, personal property, new machinery/equipment and the installation of any improvements at the replacement residence or business location may be included as relocation assistance. Do not include relocation expenses applicable to the relocation of district personnel, district buildings/furnishings or district equipment.

(3) Four percent of the appraised value determined in (b)(1), but not less than $50,000. This amount shall provide an allowance for appraisals, escrow, survey, site testing, CDE review/approvals and the preparation of the POESA and the PEA.

(4) The estimated DTSC costs for review, approval, and oversight of the POESA and the PEA applicable to the district–owned site.

The amounts above shall be reduced, on a prorated basis, by the percentage of any excess acreage of the district–owned site that exceeds the master plan site acreage approved by the CDE.

If the acreage of the district–owned site is less than the size recommended by the CDE for the master planned project capacity and the district plans on acquiring additional acreage as part of the project, the additional acreage, up to the CDE recommended site size, may be funded under the provisions of Section 1859.74.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17072.12 and 17251, Education Code.

HISTORY

1. New section filed 2–6–2003; operative 2–6–2003 pursuant to Government Code section 11343.4 (Register 2003, No. 6).

§ 1859.74.6. District–Owned Site Cost Benefit Analysis.

Pursuant to Subdivision (d) of Education Code Section 17072.12, a cost benefit analysis must be made to determine if it is more economical to utilize the existing district–owned site currently used for a non–school function as a school site rather than acquire an alternative site in the district. A determination that it is more economical to use the existing district–owned site as a school site will be made if the current estimated value of the district–owned site as determined in (a)(3) is less than the current estimated value of an alternative site as determined in (b)(5).

(a) Current Estimated Value of District–Owned Site.

(1) Determine the value of the district–owned site by a preliminary appraisal or an appraisal made or updated no more than six months prior to submittal of the Approved Application to the OPSC. The appraisal shall include any buildings on the site and shall be made using the guidelines in Section 1859.74.1. The appraised value shall be increased for the following:

(A) The relocation expenses that conform to Title 25, California Code of Regulations, Section 6000, et seq. The reasonable and necessary relocation costs for purchasing fixtures and equipment, personal property, new machinery/equipment and the installation of any improvements at the replacement residence or business location may be included as relocation assistance. Do not include relocation expenses applicable to the relocation of district personnel, district buildings/furnishings or district equipment.

(B) Four percent of the appraised value determined in (a)(1), but not less than $50,000. This amount shall provide an allowance for appraisals, escrow, survey, site testing, CDE review/approvals and the preparation of the POESA and the PEA.

(C) The estimated DTSC costs for review, approval, and oversight of the POESA and the PEA.

(2) Determine the estimated current site development cost that would be necessary on the district–owned site if it were to be used as a school site pursuant to Section 1859.76. Estimated cost for demolition of existing buildings on the site may be included as a site development cost.

(3) Add the amount determined in (a)(1) to the amount determined in (a)(2).

(b) Current Estimated Value of Alternative Site.

(1) The district must identify an alternative site within the boundaries of the district that meet all the following:

(A) The alternative site is an approvable site by the CDE.

(B) The alternative site is located no more than three miles from the district owned site if the project is for a high school, no more than two miles from the district owned site if the project is for a middle school and no more than one mile from the district owned site if the project is for an elementary school.

(2) Determine the value of the alternative site selected in (b)(1) by a preliminary appraisal or an appraisal made or updated no more than six months prior to submittal of the Approved Application to the OPSC. The appraisal shall include any buildings on the alternative site and shall be made using the guidelines in Section 1859.74.1. The appraised value shall be increased for the following:

(A) The relocation expenses that conform to Title 25, California Code of Regulations, Section 6000, et seq. The reasonable and necessary relocation costs for purchasing fixtures and equipment, personal property, new machinery/equipment and the installation of any improvements at the replacement residence or business location may be included as relocation assistance.

(B) Four percent of the appraised value determined in (b)(2), but not less than $50,000. This amount shall provide an allowance for appraisals, escrow, survey, site testing, CDE review/approvals and the preparation of the POESA and the PEA.

(C) The estimated DTSC costs for review, approval, and oversight of the POESA and the PEA.

(D) The estimated current site development cost that would be necessary on the alternative site if it were to be used as a school site pursuant to Section 1859.76. Estimated cost for demolition of existing buildings on the alternative site may be included as a site development cost.

(3) Determine the average appraised value per acre by dividing the appraised value of the alternative site determined in (b)(2) by the number of acres of the alternative site.

(4) Multiply the average appraised value per acre of the alternative site determined in (b)(3) by the number of acres of the district–owned site identified in (a).

(5) Multiply the quotient determined in (b)(4) by 110 percent.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17072.12 and 17251, Education Code.

HISTORY

1. New section filed 2–6–2003; operative 2–6–2003 pursuant to Government Code section 11343.4 (Register 2003, No. 6).

§ 1859.75. Alternative District–Owned Site.

In order to receive funding authorized by Sections 1859.74 or 1859.74.2, the district must:

(a) certify there is no available Alternative District–Owned Site for that project deemed useable for school purposes by the CDE; or,

(b) certify that it intends to sell an available Alternative District–Owned Site and use the proceeds for the purchase of the new site. In this event, the Board will recognize either (1) or (2):

(1) one–half of the actual cost or the appraised value of the available Alternative District–Owned Site as determined in Section 1859.74, whichever is the lesser, or

(2) fifty percent of one and one–half times value of the site purchased for the project as determined in Section 1859.74.2.

NOTE: Authority cited: Sections 17070.35 and 17072.13, Education Code. Reference: Section 17072.12, Education Code.

HISTORY

1. New section filed 12–3–98 as an emergency; operative 12–3–98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4–2–99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3–31–99 as an emergency; operative 3–31–99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7–29–99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7–29–99 as an emergency; operative 7–29–99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11–26–99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7–29–99 order transmitted to OAL 8–26–99 and filed 10–8–99 (Register 99, No. 41).
5. Amendment of first paragraph filed 11–4–2002 as an emergency; operative 11–4–2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11–4–2003 or emergency language will be repealed by operation of law on the following day.
6. Amendment of section and NOTE filed 2–27–2003 as an emergency; operative 2–27–2003 (Register 2003, No. 9). A Certificate of Compliance must be transmitted to OAL by 6–27–2003 or emergency language will be repealed by operation of law on the following day.
7. Amendment of section and NOTE refiled 6–19–2003 as an emergency; operative 6–19–2003 (Register 2003, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–17–2003 or emergency language will be repealed by operation of law on the following day.
8. Amendment of section and NOTE refiled 10–10–2003 as an emergency; operative 10–10–2003 (Register 2003, No. 41). A Certificate of Compliance must be transmitted to OAL by 2–9–2004 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 11–4–2002 order transmitted to OAL 11–4–2003 and filed 12–19–2003 (Register 2003, No. 51).
10. Certificate of Compliance as to 10–10–2003 order transmitted to OAL 2–9–2004 and filed 3–23–2004 (Register 2004, No. 13).

§ 1859.75.1. Separate Site Apportionment for Environmental Hardship.

(a) A district is eligible for a separate apportionment for site acquisition even if it does not meet the financial hardship criteria contained in Section 1859.81with the exception of qualifying projects pursuant to the Overcrowding Relief Grant, Section 1859.180, when all the following requirements are met:

(1) The district has eligibility for grants that equal at least 50 percent of the CDE master plan capacity of the site.

(2) The district has received a contingent site approval letter from the CDE indicating that the proposed site is the best available.

(3) The district has obtained a preliminary appraisal or an appraisal of the property by a qualified appraiser utilizing criteria outlined in Section 1859.74.1. The preliminary appraisal report may be made without access to the site.

(4) The district has provided a letter from the DTSC pursuant to Education Code Section 17072.13 that indicates the time necessary to complete the remediation removal of any hazardous materials/waste on the proposed site as determined necessary by the PEA and required in the RA, will take at least 180 calendar days to complete.

(b) If the conditions in (a) are met, the district is eligible for a separate site apportionment not to exceed 50 percent of one and one half times the value of an appraisal that conforms to Section 1859.74.1 for the costs included in (b)(1) and (b)(4) plus the additional costs included in (b)(2) and (b)(3). The costs included in (b)(2) and (b)(3) are in addition to 50 percent of one and one half times the appraisal value cap.

(1) The cost of the site as determined in Section 1859.74.1 and the amount the district reasonably expects to pay for any hazardous materials/waste removal and/or remediation costs for the site.

(2) Fifty percent of the estimated relocation expenses that will conform to Title 25, California Code of Regulations, Section 6000, et seq. The reasonable and necessary relocation costs for purchasing fixtures and equipment, personal property, new machinery/equipment, and the installation of any improvements at the replacement residence or business location may be included as relocation assistance.

(3) Fifty percent of four percent of the lesser of the appraised value of the site or the amount the district reasonably expects to pay for the site acquisition including any hazardous materials/waste removal and/or remediation costs for the site, but not less than 50 percent of $50,000.

(4) The estimated DTSC costs for review, approval and oversight of the POESA and the PEA.

The amount provided in (b) as a separate site apportionment shall be offset from the New Construction Grant amount the district would otherwise be eligible for pursuant to Section 1859.70. A district seeking a separate apportionment for site acquisition shall submit Form SAB 50–04.

(c) The limitation of 50 percent of one and one half times the value of an appraisal for costs in subsections (b), (b)(1) and (b)(4) may be exceeded when the Board finds that unforeseen circumstances exist, and when both of the following exist:

(1) CDE determines that the site is the best available site for meeting the educational and safety needs of the School District.

(2) Substantiation that the costs are limited to minimum required to complete the evaluation and RA approved by the DTSC.

NOTE: Authority cited: Section 17072.13, Education Code. Reference: Sections 17072.13, 17076.10 and 17079.20, Education Code.

HISTORY

1. New section filed 6–26–2000; operative 6–26–2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
2. Amendment of last paragraph filed 7–17–2000 as an emergency; operative 7–17–2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11–14–2000 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 7–17–2000 order transmitted to OAL 11–9–2000 and filed 12–27–2000 (Register 2000, No. 52).
4. Amendment of last paragraph filed 1–2–2001 as an emergency; operative 1–2–2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5–2–2001 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1–2–2001 order transmitted to OAL 5–1–2001 and filed 6–13–2001 (Register 2001, No. 24).
6. Amendment of last paragraph filed 7–25–2001; operative 7–25–2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).
7. Amendment of last paragraph filed 8–13–2001; operative 8–13–2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).
8. Amendment of subsection (b)(4) filed 4–10–2002; operative 4–10–2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).
9. Amendment of last paragraph filed 5–2–2002; operative 6–1–2002 (Register 2002, No. 18).
10. Amendment of last paragraph filed 8–12–2002 as an emergency; operative 8–12–2002 (Register 2002, No. 33). A Certificate of Compliance must be transmitted to OAL by 12–10–2002 or emergency language will be repealed by operation of law on the following day.
11. Amendment of subsection (b)(3) and last paragraph filed 11–4–2002 as an emergency; operative 11–4–2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11–4–2003 or emergency language will be repealed by operation of law on the following day.
12. Certificate of Compliance as to 8–12–2002 order transmitted to OAL 12–3–2002 and filed 1–16–2003 (Register 2003, No. 3).
13. Amendment of subsections (a)(4) and (b)–(b)(3) and new subsections (c)–(c)(2) filed 2–27–2003 as an emergency; operative 2–27–2003 (Register 2003, No. 9). A Certificate of Compliance must be transmitted to OAL by 6–27–2003 or emergency language will be repealed by operation of law on the following day.
14. Amendment of subsections (a)(4) and (b)–(b)(3) and new subsections (c)–(c)(2) refiled 6–19–2003 as an emergency; operative 6–19–2003 (Register 2003, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–17–2003 or emergency language will be repealed by operation of law on the following day.
15. Amendment of subsections (a)(4) and (b)–(b)(3) and new subsections (c)–(c)(2) refiled 10–10–2003 as an emergency; operative 10–10–2003 (Register 2003, No. 41). A Certificate of Compliance must be transmitted to OAL by 2–9–2004 or emergency language will be repealed by operation of law on the following day.
16. Certificate of Compliance as to 11–4–2002 order transmitted to OAL 11–4–2003 and filed 12–19–2003 (Register 2003, No. 51).
17. Certificate of Compliance as to 10–10–2003 order transmitted to OAL 2–9–2004 and filed 3–23–2004 (Register 2004, No. 13).
18. Amendment of subsection (a) and NOTE filed 8–31–2007; operative 8–31–2007 pursuant to Government Code section 11343.4 (Register 2007, No. 35).

§ 1859.76. New Construction Additional Grant for Site Development Costs.

In addition to any other funding authorized by these Regulations, the Board shall provide funding equal to 50 percent of the following approved site development and applicable design costs:

(a) Service site development cost, within school property lines for:

(1) Site clearance including the removal of trees, brush, and debris.

(2) Demolition and removal of existing buildings and site improvements which lie in the footprint of a proposed building or proposed site development.

(3) Removal and rerouting of existing utility service which lie in the footprint of a proposed building or proposed site development.

(4) Rough grading including cut and fill, and leveling and terracing operations required in the design of the project.

(5) Soil compaction adhering to common engineering practices and engineered fill that is required by a soils report that is available for review by the OPSC.

(6) On–site drainage facilities including inlets below grade drainage facilities and retention basins.

(7) Erosion control improvements such as plant material, temporary sprinkler systems, jute mesh and straw, due to embankments having a slope of at least two to one and a vertical height greater than six feet.

(8) Outside stairways, handicap ramps and retaining walls due to embankments having a slope of at least two to one and a vertical height greater than six feet.

(9) Relocation of existing portable buildings which lie in the footprint of a proposed building or proposed site development including the cost for set–up and utilities if the portable will be relocated on the same site. If the portable will be moved to another site, only the costs to move the portable to the new location.

(10) Fire code requirements on site that are not a part of the building.

(11) Funding for parking structures on a new construction project when all the following have been met:

(A) The new construction project will be located on site acreage that is less than 50 percent of the site size recommended by the CDE for the master planned project capacity.

(B) The number of parking stalls to be funded does not exceed 2.25 for each classroom constructed in an elementary or middle school project.

(C) The number of parking stalls to be funded does not exceed six for each high school classroom constructed in a high school project that will serve 9–12 pupils.

(D) The state grant does not exceed $7,500 per parking stall. The amount shown shall be adjusted annually in the manner prescribed in Section 1859.71.

(E) The parking structure is any of the following:

1. It is multilevel and has at least two floors of parking space.
2. It is single level with site development above the single level parking space.
3. It is single level that is subterranean or below ground level with site development above the single level parking space.
4. It is single level with buildings above the single level parking space.

(12) Removal and relocation of portable classrooms on a site eligible for replacement pursuant to Section 1859.82(a) that are available for housing pupils pursuant to Section 1859.35(a).

(b) Off–site development cost on up to two immediately adjacent sides of the site, for the following:

(1) Curbs, gutters and paving of streets not to exceed one–half the mandated local street code requirements. When the existing streets are to be widened inward toward the property line from the existing face of the curb, all new street improvements lying within the one–half of mandated street width adjacent to the project.

(2) Sidewalks mandated by local ordinances.

(3) Street lighting, planting areas, street signs, traffic signals, trees or other costs mandated by local ordinances.

(4) City and/or county or special district fees pursuant to active ordinances.

(5) Reasonable cost for storm drains to point of connection.

(6) Funding for safety paths for pedestrian use beyond two immediately adjacent sides of the site necessary for a safe route to the new school site when the following conditions are met:

(A) The school district governing board has made a finding at a public hearing that pedestrian safety concerns require improvements in the form of safety paths to provide access to the school site, and the Department of Education concurs with that finding.

(B) The improvements are limited to the work necessary to install concrete, asphalt, gravel or other paving necessary to provide the safe paths.

(C) The state grant does not exceed $50,000.

(D) The improvements do not include any cost for the acquisition of land, easements or other rights-of-way.

(E) The SAB has determined that development of additional pedestrian paths is reasonable.

(c) Utility service costs associated with the CDE approved site size that are necessary to serve the master planned capacity of the site as follows:

(1) Water: Installation of water supply line(s) and connection fees from the utility company connection to the meter, meters not provided by the serving utility, or installation of a domestic water system (i.e. well, pump, tank).

(2) Sewage: Installation of main sewage disposal line from the utility company connection to the first building lateral and if applicable, connection fees. Installation of a sewage treatment/disposal system and a main disposal line from the treatment system to the nearest building lateral of the collection system.

(3) Gas: Installation of main supply line and connection fees from utility company to meter and connection fee if applicable. Installation of meters not provided by the utility. Connection of a liquefied petroleum system (and tank) from the main supply line to the first building lateral.

(4) Electric: Installation of service from the utility to the building switchboard. Primary electric service runs from the utility company's point of connection to the transformer. Secondary electric service runs from the transformer to the switchboard. Connection fee, transformer pads and protective devices.

(5) Communication systems: Installation of service from the company to the nearest distribution center.

(d) General Site Development costs within school property lines for an addition to an existing school site project wherein additional acreage is acquired, with the exception of existing school site acreage that is leased pursuant to Section 1859.22, or a new school project, determined as follows:

(1) $19,200 per Useable Acre as approved by the CDE. This sum may be increased by the percentage identified in Section 1859.83(b). The per acre amount shown above shall be adjusted annually in the manner prescribed in Section 1859.71.

(2) 6 percent of the State and district share for Elementary School Pupils and Middle School Pupils and 3.75 percent of the State and district share for High School Pupils of the New Construction Grant. For purposes of this calculation, the percentage amount for Severely Disabled Individuals with Exceptional Needs and Non-Severely Disabled Individuals with Exceptional Needs pupils shall be based on the type of project selected by the district on the Form SAB 50-04.

(3) 6 percent of the State and district share for Elementary School Pupils and Middle School Pupils and 3.75 percent of the State and district share for High School Pupils of the funding provided by Sections 1859.71.2, 1859.72, 1859.73, 1859.73.2, 1859.82, 1859.83(a), (b) and (c) and 1859.125(a)(1) through (a)(2).

Subsection (d) of this section shall be suspended no later than January 1, 2009, unless otherwise extended by amendments as adopted by the Board.

The district must submit a detailed cost estimate for all requests for site development work, with the exception of General Site Development, and any justification documents that will support the work with the Form SAB 50-04.

The Board will approve reasonable and appropriate site development work which meet common engineering practices and industry standards that are consistent with the specific site conditions if the site development costs are consistent with the most current edition of the Saylor Current Construction Costs. The design professional must certify to the district that the site development work does not exceed the minimum requirements to develop the site to meet educational needs and/or standards.

General Site Development provided pursuant to 1859.76(d)(1), service site and off-site development costs shall be reduced, on a prorated basis, by the percentage of the excess acreage of the site that exceeds the master plan site acreage approved by the CDE.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35, 17072.12 and 17072.35, Education Code.

HISTORY

1. New section filed 12-3-98 as an emergency; operative 12-3-98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-2-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-31-99 as an emergency; operative 3-31-99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7-29-99 or emergency language will be repealed by operation of law on the following day.
3. Amendment of antepenultimate paragraph filed 7-12-99 as an emergency; operative 7-12-99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-9-99 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 7-29-99 as an emergency; operative 7-29-99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11-26-99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7-29-99 order, including amendment of section, transmitted to OAL 8-26-99 and filed 10-8-99 (Register 99, No. 41).
6. Certificate of Compliance as to 7-12-99 order, including further amendments, transmitted to OAL 11-5-99 and filed 12-22-99 (Register 99, No. 52).
7. New subsections (a)(11)-(a)(11)(D) filed 3-13-2000; operative 4-12-2000 (Register 2000, No. 11).
8. New subsection (a)(12) and amendment of subsections (c) and (c)(5) filed 6-26-2000; operative 6-26-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
9. Amendment of antepenultimate paragraph filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
10. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
11. Amendment of section heading and subsection (c)(5) filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
12. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
13. Amendment of antepenultimate paragraph filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).
14. Amendment of subsection (c)(5) filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).
15. Amendment of subsection (c)(5) filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).
16. Amendment of antepenultimate paragraph filed 5-2-2002; operative 6-1-2002 (Register 2002, No. 18).
17. Amendment of antepenultimate paragraph filed 8-12-2002 as an emergency; operative 8-12-2002 (Register 2002, No. 33). A Certificate of Compliance must be transmitted to OAL by 12-10-2002 or emergency language will be repealed by operation of law on the following day.
18. Amendment of first, antepenultimate and penultimate paragraphs filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.
19. Certificate of Compliance as to 8-12-2002 order transmitted to OAL 12-3-2002 and filed 1-16-2003 (Register 2003, No. 3).
20. Amendment of subsection (a)(11) and new subsections (a)(11)(E)-(a)(11)(E)4. filed 2-6-2003; operative 2-6-2003 pursuant to Government Code section 11343.4 (Register 2003, No. 6).
21. Certificate of Compliance as to 11-4-2002 order transmitted to OAL 11-4-2003 and filed 12-19-2003 (Register 2003, No. 51).
22. New subsections (d)-(d)(3) and amendment of antepenultimate and last paragraphs filed 9-5-2006 as an emergency; operative 9-5-2006 (Register 2006, No. 36). A Certificate of Compliance must be transmitted to OAL by 1-3-2007

or emergency language will be repealed by operation of law on the following day.

23. Certificate of Compliance as to 9–5–2006 order, including further amendment of subsections (d)–(d)(3), transmitted to OAL 1–3–2007 and filed 2–16–2007 (Register 2007, No. 7).
24. Amendment of subsection (d)(3) filed 3–3–2008 as an emergency; operative 3–3–2008 (Register 2008, No. 10). A Certificate of Compliance must be transmitted to OAL by 9–2–2008 or emergency language will be repealed by operation of law on the following day.
25. Certificate of Compliance as to 3–3–2008 order transmitted to OAL 6–9–2008 and filed 7–10–2008 (Register 2008, No. 28).

§ 1859.77. Reduction in the New Construction Grant.

After the determination of the district's New Construction Adjusted Grant and financial hardship funding pursuant to Section 1859.81 have been made, the New Construction Adjusted Grant and any financial hardship funding provided pursuant to Section 1859.81 will be reduced by the alternative fee collected pursuant to Government Code Section 65995.7(a), if a reimbursement election or agreement pursuant to Government Code Section 65995.7 is not in effect.

Any reduction to the New Construction Adjusted Grant amount and any funding provided by Section 1859.81 made pursuant to this Section shall only include those alternative fees collected from residential units to be served by the facilities associated with the New Construction Grant. If the reduction is greater than the New Construction Adjusted Grant and the funding provided by Section 1859.81, the pupils to be housed in the proposed project will be reduced from the district's baseline eligibility and no SFP grants will be made to the district for that project. Any remaining off–set of the alternative fees collected shall be off–set on the next request for a New Construction Grant for other facilities to serve those residential units.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17072.20(b), Education Code; and Section 65995.7, Government Code.

HISTORY

1. New section filed 12–3–98 as an emergency; operative 12–3–98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4–2–99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3–31–99 as an emergency; operative 3–31–99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7–29–99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7–29–99 as an emergency; operative 7–29–99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11–26–99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7–29–99 order, including amendment of section, transmitted to OAL 8–26–99 and filed 10–8–99 (Register 99, No. 41).
5. Amendment of first paragraph filed 11–4–2002 as an emergency; operative 11–4–2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11–4–2003 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 11–4–2002 order transmitted to OAL 11–4–2003 and filed 12–19–2003 (Register 2003, No. 51).

§ 1859.77.1. New Construction District Matching Share Requirement.

Any funding provided by these Regulations shall require a district matching share contribution on a dollar–for–dollar basis with the exception of the following:

(a) Financial hardship provided by Section 1859.81 or any additional grant provided for a district–owned site acquisition cost pursuant to Sections 1859.74.5 or 1859.81.2.

(b) If the Approved Application is funded under the Small High School Program, a district matching share equal to at least 40 percent of the total project cost shall be required.

The district may include as its district matching share any amounts expended on the project for an energy audit made pursuant to Education Code Section 17077.10 and any amounts applied to the project for incentive grants or rebates received by the district from a program funded pursuant to Public Utilities Code Section 381.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17072.30, 17074.32 and 17077.10, Education Code.

HISTORY

1. New section filed 12–3–98 as an emergency; operative 12–3–98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4–2–99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3–31–99 as an emergency; operative 3–31–99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7–29–99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7–29–99 as an emergency; operative 7–29–99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11–26–99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7–29–99 order transmitted to OAL 8–26–99 and filed 10–8–99 (Register 99, No. 41).
5. New second paragraph and amendment of NOTE filed 6–26–2000; operative 6–26–2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
6. Amendment of first paragraph filed 11–4–2002 as an emergency; operative 11–4–2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11–4–2003 or emergency language will be repealed by operation of law on the following day.
7. Amendment of first paragraph filed 2–6–2003; operative 2–6–2003 pursuant to Government Code section 11343.4 (Register 2003, No. 6).
8. Certificate of Compliance as to 11–4–2002 order transmitted to OAL 11–4–2003 and filed 12–19–2003 (Register 2003, No. 51).
9. Amendment of section and NOTE filed 3–14–2006; operative 3–14–2006 pursuant to Government Code section 11343.4 (Register 2006, No. 11).

§ 1859.77.2. Use of New Construction Grant Funds for Projects Accepted by the DSA on or before January 22, 2003.

New Construction Grant funds and any other funds provided by these Regulations shall be expended as set forth in Education Code Section 17072.35; and may also be utilized for the cost incurred by the district for the development and implementation of remedial action plan approved by the DTSC pursuant to Education Code Section 17213.

Authorization for use of New Construction Grants for which the final plans and specifications for the project were accepted by the DSA on or before January 22, 2003 may be requested as follows:

(a) A district may request new construction grants that do not to exceed 135 percent of the number of pupils that will be housed in the project based on loading standards pursuant to Education Code Section 17071.25(a)(2) and any loading standards adopted by the SAB by these regulations if the grant requests above 100 percent of the number of pupils to be housed do not include eligibility based on Special Day Class pupils and if the district has adopted a school board resolution that has been discussed at a public hearing at a regularly scheduled meeting of the district's governing board on a date preceding the Application filing that includes the following:

(1) A plan that identifies how the district has housed or will house the excess pupils receiving grants in the project in school buildings as defined in Education Code Section 17368. The plan may not include housing the excess pupils in portables excluded from existing school building capacity pursuant to Education Code Section 17071.30 or housing in facilities to be constructed with district funds if the district has received financial hardship approval pursuant to Section 1859.81. The plan shall not utilize Multi–track Year Round Education schedules for the purposes of housing excess pupils.

(2) An acknowledgement that funds for the purposes of housing the excess pupils are being diverted to another project.

(3) An acknowledgement that the State has satisfied its obligation, pursuant to Section 1859.50, to house the pupils receiving grants in the project.

(b) A district may request new construction grant eligibility determined at a different grade level than the proposed project that does not exceed 135 percent of the number of pupils that will be housed in the project based on loading standards pursuant to Education Code Section 17071.25(a)(2) and any loading standards adopted by the SAB by these regulations subject to all of the following:

(1) The district has adopted a school board resolution that has been discussed at a public hearing at a regularly scheduled meeting of the district's governing board on a date preceding the Application filing that includes the following:

(A) A plan that identifies how the district has housed or will house the excess pupils receiving grants in the project in school buildings as defined in Education Code Section 17368. The plan may not include housing the excess pupils in portables excluded from existing school building capacity pursuant to Education Code Section 17071.30 or housing in facilities to be constructed with district funds if the district has received financial hardship approval pursuant to Section 1859.81. The plan shall not utilize Multi-track Year Round Education schedules for the purposes of housing excess pupils.

(B) An acknowledgement that funds for the purposes of housing the excess pupils are being diverted to another project.

(C) An acknowledgement that the State has satisfied its obligation, pursuant to Section 1859.50, to house the pupils receiving grants in the project.

(2) Only New Construction Grant eligibility for grades Kindergarten through 12 can be requested pursuant to this subsection (b), and the district must use its New Construction Grant eligibility, pursuant to subsections (b), in the following order:

(A) At the grade level of the proposed project.

(B) At the lowest grade level other than the proposed project.

(C) At the next highest grade level other than the proposed project.

(c) A district may request new construction eligibility based on the SFP Regulation Section 1859.77.2 in place as of the date of a local bond election provided that clear language was included in the local bond that specifically identified the proposed project, and provided that the project meets all laws and regulations of the SFP.

If a district wishes to amend its Approved Application to include or increase its use of grants request after the submittal to the OPSC, the district must request in writing that the Approved Application be withdrawn and removed from the OPSC wordload list. The resubmitted application will receive a new processing date by the OPSC.

The New Construction Grant amount provided shall be determined based on the grant amount provided in Education Code Section 17072.10 for the grade level that generated the eligibility and any New Construction Additional Grant or New Construction Excessive Cost Hardship Grant the district qualifies for as provided by these regulations.

NOTE: Authority cited: Section 17072.13, Education Code. Reference: Sections 17072.13 and 17072.35, Education Code.

HISTORY

1. New section filed 6–26–2000; operative 6–26–2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
2. Amendment filed 8–13–2001; operative 8–13–2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).
3. Amendment of first and last paragraphs filed 11–4–2002 as an emergency; operative 11–4–2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11–4–2003 or emergency language will be repealed by operation of law on the following day.
4. Amendment of section heading and section filed 2–13–2003 as an emergency; operative 2–13–2003 (Register 2003, No. 7). A Certificate of Compliance must be transmitted to OAL by 6–13–2003 or emergency language will be repealed by operation of law on the following day.
5. Amendment of section heading and section refiled 6–12–2003 as an emergency; operative 6–12–2003 (Register 2003, No. 24). A Certificate of Compliance must be transmitted to OAL by 10–10–2003 or emergency language will be repealed by operation of law on the following day.
6. Amendment of first paragraph and subsections (a), (b)–(b)(1) and (b)(2) and new subsection (c) and following paragraph filed 7–7–2003 as an emergency; operative 7–7–2003 (Register 2003, No. 28). A Certificate of Compliance must be transmitted to OAL by 11–4–2003 or emergency language will be repealed by operation of law on the following day.
7. Amendment of section heading and section refiled 10–9–2003 as an emergency; operative 10–9–2003 (Register 2003, No. 41). A Certificate of Compliance must be transmitted to OAL by 2–6–2004 or emergency language will be repealed by operation of law on the following day.
8. Amendment of first paragraph and subsections (a), (b)–(b)(1) and (b)(2) and new subsection (c) and following paragraph refiled 11–3–2003 as an emergency; operative 11–3–2003 (Register 2003, No. 45). A Certificate of Compliance must be transmitted to OAL by 3–2–2004 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 11–4–2002 order transmitted to OAL 11–4–2003 and filed 12–19–2003 (Register 2003, No. 51).
10. Amendment of first paragraph and subsections (a), (b)–(b)(1) and (b)(2) and new subsection (c) and following paragraph refiled 3–2–2004 as an emergency, including further amendment of first paragraph; operative 3–2–2004 (Register 2004, No. 10). A Certificate of Compliance must be transmitted to OAL by 6–30–2004 or emergency language will be repealed by operation of law on the following day.
11. Certificate of Compliance as to 10–9–2003 order transmitted to OAL 2–6–2004 and filed 3–22–2004 (Register 2004, No. 13).
12. Certificate of Compliance as to 3–2–2004 order transmitted to OAL 6–28–2004 and filed 8–9–2004 (Register 2004, No. 33).

§ 1859.77.3. Use of New Construction Grant Funds for Projects Accepted by the DSA After January 22, 2003.

New Construction Grant funds and any other funds provided by these Regulations shall be expended as set forth in Education Code Section 17072.35; and may also be utilized for the cost incurred by the district for the development and implementation of remedial action plan approved by the DTSC pursuant to Education Code Section 17213.

Authorization for use of New Construction Grants for which the final plans and specifications for the project were accepted by the DSA after January 22, 2003 may be requested as follows:

(a) A district may request new construction grants that exceed the capacity of the project based on loading standards pursuant to Education

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Code Section 17071.25(a)(2) and any loading standards adopted by the SAB by these regulations if the project is to construct a multipurpose, gymnasium and/or library, or for an Alternative Education school to construct a multipurpose/gymnasium, library, counseling offices, and/or conference rooms, at an existing site that does not have an existing or adequate facility of the type being requested when all of the following is met:

(1) The district must adopt a school board resolution that has been discussed at a public hearing at a regularly scheduled meeting of the district's governing board on a date preceding the application filing that includes the following:

(A) An acknowledgement that funds for the purposes of housing the excess pupils are being diverted to another project.

(B) An acknowledgement that the State has satisfied its obligation, pursuant to Section 1859.50, to house the pupils receiving grants in the project.

(C) A plan outlined in the resolution that identifies how the district has housed or will house the pupils receiving grants in the project in school buildings as defined in Education Code Section 17368. The plan must certify one of the following methods:

1. The district will construct or acquire facilities for housing the pupils with funding not otherwise available to the SFP as a district match within five years of project approval by the SAB, and the district must identify the source of the funds; or

2. The district will utilize higher district loading standards providing the loading standards are within the approved district's teacher contract and do not exceed 33:1 per classroom.

(2) The existing school site was not constructed under the SFP.

(3) The proposed project includes no more than eight classrooms.

(4) Grant requests, above 100 percent of the number of pupils to be housed, based on Special Day Class pupil eligibility are only permitted under this subsection (a) when building a Special Day Class facility.

(5) For purposes of this section to determine if an existing facility is inadequate, the existing square footage is less than 60 percent of the square footage necessary for the current CBEDS for the site plus the Net School Building Capacity of the proposed project as calculated pursuant to Section 1859.82(b), except for Alternative Education Schools. For Alternative Education Schools, refer to the following:

Alternative Education

Support Facility	*Existing Site Plus Proposed Project Contain 1 or 2 Classrooms*	*Existing Site Plus Proposed Project Contain 3 to 10 Classrooms**	*Existing Site Plus Proposed Project Contain 11 or More Classrooms**
Multipurpose Facility or Gymnasium (includes food service)	2,500 sq. ft.	6.3 sq. ft. per pupil minimum 4,000 sq. ft.	6.3 sq. ft. per pupil minimum 7,200 sq. ft., maximum of 18,000 sq. ft.
Counseling Offices, and/or Conference Rooms	1,000 sq. ft. Combined Total	1,000 sq. ft.	1,000 sq. ft.
Library/Media Space		4.3 sq. ft. per pupil plus 600 sq. ft.	4.3. sq. ft. per pupil plus 600 sq. ft.

*The proposed project cannot include more than eight classrooms.

(6) The maximum excess pupil amount being requested for this type of use of grants request, is calculated by the following:

(A) Multiply the current CBEDS for the site plus the Net School Building Capacity for the proposed project by the square footage for the type of facility being requested, pursuant to Section 1859.82(b), except for Alternative Education Schools. For Alternative Education Schools, refer to the chart above.

(B) Multiply the product in (a)(6)(A) above by the per square foot grant amount for multipurpose, gymnasium or library facilities pursuant to Section 1859.82(b); utilize the same per square foot grant amount for the Alternative Education school facilities as shown in Section 1859.82(b).

(C) Divide the product in (a)(6)(B) above by the New Construction Grant amount for the project grade level, rounded up to the nearest whole number.

(b) A district may request new construction grant eligibility determined at a different grade level than the proposed project that does not exceed the capacity of the project, unless the project includes a request as indicated in Section 1859.77.3(a), based on loading standards pursuant to Section 17071.25(a)(2) and any loading standards adopted by the SAB by these regulations when all of the following is met:

(1) The district must adopt a school board resolution that has been discussed at a public hearing at a regularly scheduled meeting of the district's governing board on a date preceding the application filing that includes the following:

(A) An acknowledgement that funds for the purposes of housing the excess pupils are being diverted to another project.

(B) An acknowledgement that the State has satisfied its obligation, pursuant to Section 1859.50, to house the pupils receiving grants in the project.

(C) A plan outlined in the resolution that identifies how the district has housed or will house the pupils receiving grants in the project in school buildings as defined in Education Code Section 17368. The plan must certify one of the following methods:

1. The district will construct or acquire facilities for housing the pupils with funding not otherwise available to the SFP as a district match within five years of project approval by the SAB, and the district must identify the source of the funds; or

2. The district will utilize higher district loading standards providing the loading standards are within the approved district's teacher contract and do not exceed 33:1 per classroom; or

3. The pupils requested from a different grade level will be housed in classrooms at an existing school in the district which will have its grade level changed, to the grade level requested, at the completion of the proposed SFP project.

(2) Only New Construction Grant eligibility for grades Kindergarten through 12 can be requested to pursuant to this subsection (b), and the district must use its New Construction Grant eligibility, pursuant to subsection (b), in the following order:

(A) At the grade level of the proposed project, if available.

(B) At the lowest grade level other than the proposed project, if available.

(C) At the next highest grade level other than the proposed project.

(c) A district may request new construction eligibility based on the SFP Regulation Section 1859.77.2 or 1859.77.3, as appropriate, in place as of the date of a local bond election provided that clear language was included in the local bond that specifically identified the proposed project, and provided that the project meets all laws and regulations of the SFP.

If a district wishes to amend its Approved Application to include or increase its use of grants request after the submittal to the OPSC, the district must request in writing that the Approved Application be withdrawn and removed from the OPSC workload list. The resubmitted application will receive a new processing date by the OPSC.

The New Construction Grant amount provided shall be determined based on the grant amount provided in Education Code Section 17072.10 for the grade level that generated the eligibility and any New Construc-

tion Additional Grant or New Construction Excessive Cost Hardship Grant the district qualifies for as provided by these regulations.

NOTE: Authority cited: Sections 17070.35 and 17072.13, Education Code. Reference: Sections 17072.13 and 17072.35, Education Code.

HISTORY

1. New section filed 7–7–2003 as an emergency; operative 7–7–2003 (Register 2003, No. 28). A Certificate of Compliance must be transmitted to OAL by 11–4–2003 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 11–3–2003 as an emergency; operative 11–3–2003 (Register 2003, No. 45). A Certificate of Compliance must be transmitted to OAL by 3–2–2004 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 3–2–2004 as an emergency, including further amendment of first paragraph; operative 3–2–2004 (Register 2004, No. 10). A Certificate of Compliance must be transmitted to OAL by 6–30–2004 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 3–2–2004 order transmitted to OAL 6–28–2004 and filed 8–9–2004 (Register 2004, No. 33).
5. Amendment of subsections (a), (a)(5) and (a)(6)(A)–(B) filed 1–31–2005; operative 1–31–2005 pursuant to Government Code section 11343.4 (Register 2005, No. 5).

§ 1859.77.4. Addition to a Site and Modernization Grant for High Performance Incentive.

(a) In addition to any other funding authorized by these Regulations, the Board shall provide the grant amounts identified in Subsection (b) if all the following are met:

(1) The project includes all the prerequisites in each of the five HPRC to include Sustainable Sites, Water, Energy, Materials and Indoor Environmental Quality, that are within the scope of the project, and related subcategory credits.

(2) Once the prerequisites in (a)(1) have been met, the district may select the criteria and credits it wishes to pursue to determine point award. The category, criteria and associated points are as indicated in Section 1859.71.6 (a), with the exception of (a)(2)(C) 2. that has an amended point allowance that equals three to nine points; three points for the first five percent plus one point for each additional five percent thereafter of the site's annual power consumption that is produced on site not to exceed 35 percent.

(3) A minimum of four points must come from either Section 1859.71.6(a)(2)(C)1.b. and/or 2.

(4) The project, which includes a complete set of plans, must be submitted to and accepted by the DSA on or after May 20, 2006.

(5) The DSA has reviewed the proposed project and concurs with the points specified in the HPRC.

(6) The project will not receive funding from the Energy Efficiency Account.

(7) For those projects accepted by the DSA prior to October 1, 2007, districts may utilize the *CHPS Best Practices Manual Volume III 2002 Edition*, and the point standard will be in the range of 23 to 72 points. All prerequisites, credits and points obtained must be based on the *2002 Edition* requirements. Criteria and associated prerequisite or points as indicated in Section 1859.71.6 (a)(2)(D)2.a. and 4.c. and f. and (E)1.c. and 2.b. and district resolutions are ineligible, and (a)(3) is optional.

(b) To determine the High Performance Incentive grant, multiply the New Construction or Modernization Grant, as appropriate, by the percentage allowance in accordance with the eligible high performance points as follows:

(1) For those projects accepted by the DSA prior to October 1, 2007, pursuant to (a)(7), in which the level of high performance attained, as concurred by the DSA, is a minimum of 23 points, the New Construction or Modernization Grant, as appropriate, will be multiplied by:

(A) Two percent at 23 points plus 0.03 percent for each point attained from 24 through 33 points; or

(B) 2.35 percent at 34 points plus 0.24 percent for each point attained from 35 through 40 points; or

(C) Four percent at 41 points plus 0.36 percent for each point attained from 42 through 54 points; or

(D) 9.05 percent at 55 points plus 0.060 percent for each point attained from 56 through 72 points.

(2) For those projects accepted by the DSA utilizing the *CHPS Best Practices Manual Volume III 2006 Edition*, in which the level of high performance attained as concurred by the DSA is a minimum of 20 points, the New Construction or Modernization Grant, as appropriate, will be multiplied by:

(A) Two percent at 20 points plus 0.025 percent for each point attained from 21 through 33 points; or

(B) 2.35 percent at 34 points plus 0.24 percent for each point attained from 35 through 40 points; or

(C) Four percent at 41 points plus 0.36 percent for each point attained from 42 through 54 points; or

(D) 9.05 percent at 55 points plus 0.060 percent for each point attained from 56 through 77 points.

If there are no funds remaining in the High Performance School Account or the funds remaining are insufficient to fully fund the additional grant authorized in Subsection (b), the district may either withdraw its application and resubmit it should additional funds be made available in the High Performance School Account or continue with the addition to an existing site/modernization project and accept a full and final apportionment without the additional grant authorized by Subsection (b).

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 101012(a)(8), Education Code.

HISTORY

1. New section filed 10–1–2007; operative 10–1–2007 pursuant to Government Code section 11343.4 (Register 2007, No. 40).

§ 1859.78. Adjustment to the Modernization Grant.

The modernization per–unhoused grant amount, as provided by Education Code Section 17074.10(a), will be adjusted annually based on the change in the Class B Construction Cost Index as approved by the Board each January. The base Class B Construction Cost Index shall be 1.30 and the first adjustment shall be January, 1999.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17074.10, Education Code.

HISTORY

1. New section filed 12–3–98 as an emergency; operative 12–3–98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4–2–99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3–31–99 as an emergency; operative 3–31–99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7–29–99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7–29–99 as an emergency; operative 7–29–99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11–26–99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7–29–99 order transmitted to OAL 8–26–99 and filed 10–8–99 (Register 99, No. 41).
5. Amendment filed 11–4–2002 as an emergency; operative 11–4–2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11–4–2003 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 11–4–2002 order transmitted to OAL 11–4–2003 and filed 12–19–2003 (Register 2003, No. 51).

§ 1859.78.1. Modernization Pupil Grant Increase for Labor Compliance Program.

(a) After determining all other funding authorized by these Regulations, the Board shall increase the per–pupil grant amount by the following calculation, less the district matching share required in Section 1859.79, for any project for which the district is required under Labor Code Section 1771.7(a) and (b) to initiate and enforce a LCP:

(1) Using the chart in Section 1859.71.4(b), determine the total amount of funding to be provided for the increased costs of a modernization project due to the initiation and enforcement of a LCP.

(2) Divide the amount determined in subsection (a)(1) by the total number of pupils, or by one if no pupils are assigned, in the approved application.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17074.10, Education Code.

HISTORY

1. New section filed 12–20–2004 as an emergency; operative 12–20–2004 (Register 2004, No. 52). A Certificate of Compliance must be transmitted to OAL by 4–19–2005 or emergency language will be repealed by operation of law on the following day. For prior history, see Register 2004, No. 9.
2. Certificate of Compliance as to 12–20–2004 order transmitted to OAL 4–19–2005 and filed 5–12–2005 (Register 2005, No. 19).

§ 1859.78.2. Modernization Additional Grant for Project Assistance.

In addition to any other funding authorized by these Regulations, the Board shall provide $2,000 for Small School Districts for the cost necessary for project assistance. The amount will be adjusted annually based on the change in the Class B Construction Cost Index as approved by the Board each January. The base Class B Construction Index shall be 1.37 and the first adjustment shall be January 2001.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17074.10, Education Code.

HISTORY

1. New section filed 6–26–2000; operative 6–26–2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
2. Amendment of last paragraph filed 7–17–2000 as an emergency; operative 7–17–2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11–14–2000 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 7–17–2000 order transmitted to OAL 11–9–2000 and filed 12–27–2000 (Register 2000, No. 52).
4. Amendment of section heading and last paragraph filed 1–2–2001 as an emergency; operative 1–2–2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5–2–2001 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1–2–2001 order transmitted to OAL 5–1–2001 and filed 6–13–2001 (Register 2001, No. 24).
6. Amendment of last paragraph filed 7–25–2001; operative 7–25–2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).
7. Amendment of second paragraph filed 8–13–2001; operative 8–13–2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).
8. Amendment filed 4–10–2002; operative 4–10–2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).
9. Amendment of last paragraph filed 5–2–2002; operative 6–1–2002 (Register 2002, No. 18).
10. Amendment of last paragraph filed 8–12–2002 as an emergency; operative 8–12–2002 (Register 2002, No. 33). A Certificate of Compliance must be transmitted to OAL by 12–10–2002 or emergency language will be repealed by operation of law on the following day.
11. Amendment filed 11–4–2002 as an emergency; operative 11–4–2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11–4–2003 or emergency language will be repealed by operation of law on the following day.
12. Certificate of Compliance as to 8–12–2002 order transmitted to OAL 12–3–2002 and filed 1–16–2003 (Register 2003, No. 3).
13. Certificate of Compliance as to 11–4–2002 order transmitted to OAL 11–4–2003 and filed 12–19–2003 (Register 2003, No. 51).

§ 1859.78.3. Modernization Grant for Individuals with Exceptional Needs.

In lieu of the funding provided by Subdivision (a) of Education Code Section 17074.10 and Section 1859.78.6, the Board shall provide the grant amounts in subsections (a) and (b) for each pupil included in an approved project for modernization funding and shall provide the grant amount in subsections (c) and (d) for the CDE on behalf of the California Schools for the Deaf and Blind for each pupil included in an approved project for modernization funding. The amounts in subsections (c) and (d) represent 100 percent State funding, pursuant to Education Code Section 17073.25.

(a) $7,158 for each pupil that is a Severely Disabled Individual with Exceptional Needs.

(b) $4,788 for each pupil that is a Non–Severely Disabled Individual with Exceptional Needs.

(c) $11,930 for each pupil that meets Education Code Section 59020 and attends the California Schools for the Deaf and Blind and has facilities under 50 years old.

(d) $16,573 for each pupil that meets Education Code Section 59020 and attends the California Schools for the Deaf and Blind and has facilities 50 years old and older.

For purposes of subsections (c) and (d) above, 25 percent of the Modernization Grant shall be apportioned and released upon approval by the Board of a Separate Apportionment for Design Costs.

The amounts shown shall be adjusted annually in the manner prescribed in Section 1859.78. The grant is eligible for any modernization grant augmentation for which the project is otherwise eligible under the law and regulations.

NOTE: Authority cited: Sections 17070.35, 17072.10 and 17074.10, Education Code. Reference: Sections 17072.10, 17073.25, 17074.10 and 17074.26, Education Code.

HISTORY

1. New section filed 7–17–2000 as an emergency; operative 7–17–2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11–14–2000 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 7–17–2000 order transmitted to OAL 11–9–2000 and filed 12–27–2000 (Register 2000, No. 52).
3. Amendment of section heading, first paragraph and subsection (b) filed 1–2–2001 as an emergency; operative 1–2–2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5–2–2001 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 1–2–2001 order transmitted to OAL 5–1–2001 and filed 6–13–2001 (Register 2001, No. 24).
5. Amendment of section heading, section and NOTE filed 11–4–2002 as an emergency; operative 11–4–2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11–4–2003 or emergency language will be repealed by operation of law on the following day.
6. Amendment of first paragraph, new subsections (c) and (d) and amendment of NOTE filed 2–27–2003 as an emergency; operative 2–27–2003 (Register 2003, No. 9). A Certificate of Compliance must be transmitted to OAL by 6–27–2003 or emergency language will be repealed by operation of law on the following day.
7. Amendment of first paragraph, new subsections (c) and (d) and amendment of NOTE refiled 6–19–2003 as an emergency; operative 6–19–2003 (Register 2003, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–17–2003 or emergency language will be repealed by operation of law on the following day.
8. Amendment of first paragraph, new subsections (c) and (d) and amendment of NOTE refiled 10–10–2003 as an emergency; operative 10–10–2003 (Register 2003, No. 41). A Certificate of Compliance must be transmitted to OAL by 2–9–2004 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 11–4–2002 order transmitted to OAL 11–4–2003 and filed 12–19–2003 (Register 2003, No. 51).
10. Certificate of Compliance as to 10–10–2003 order transmitted to OAL 2–9–2004 and filed 3–23–2004 (Register 2004, No. 13).

§ 1859.78.4. Modernization Additional Grant for Fire Code Requirements.

(a) In addition to any other funding authorized by these Regulations, the Board shall provide the following grant amounts for each pupil included in an application for modernization if the project includes an automatic fire detection and alarm system as described in Education Code

[The next page is 234.29.]

Section 17074.52 or the fire detection and alarm system is deferred as authorized by Subdivision (b) of Education Code Section 17074.50:

(1) $72.12 for each elementary school pupil.

(2) $72.12 for each middle school pupil.

(3) $72.12 for each high school pupil.

(4) $134.14 for each pupil that is a Severely Disabled Individual with Exceptional Needs.

(5) $200.49 for each pupil that is a Non-Severely Disabled Individual with Exceptional Needs.

(b) Pursuant to Subdivision (c) of Education Code Section 17074.56, the Board shall provide the grant amounts shown in (a) above, in addition to any other funding authorized by these Regulations, for each pupil included in an application for modernization if all the following criteria are met:

(1) The final plans for the modernization project were submitted to the Division of the State Architect for review and approval between September 1, 2001 and June 30, 2002.

(2) The final plans for the modernization project included an automatic fire detection and alarm system as described in Education Code Section 17074.52 or the project will include the system prior to the completion of the project.

(3) The modernization project did not receive the entire Modernization Adjusted Grant apportionment by June 30, 2002.

The amounts shown in (a) above shall be adjusted annually in the manner prescribed in Section 1859.78.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17074.50, 17074.52, 17074.54 and 17074.56, Education Code.

HISTORY

1. New section filed 8-12-2002 as an emergency; operative 8-12-2002 (Register 2002, No. 33). A Certificate of Compliance must be transmitted to OAL by 12-10-2002 or emergency language will be repealed by operation of law on the following day.
2. Amendment of subsections (a) and (b) and last paragraph filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 8-12-2002 order transmitted to OAL 12-3-2002 and filed 1-16-2003 (Register 2003, No. 3).
4. Certificate of Compliance as to 11-4-2002 order transmitted to OAL 11-4-2003 and filed 12-19-2003 (Register 2003, No. 51).
5. Amendment of subsections (a)(1)-(5) filed 11-4-2004; operative 11-4-2004 pursuant to Government Code section 11343.4 (Register 2004, No. 45).

§ 1859.78.5. Modernization Additional Grant for Energy Efficiency.

(a) In addition to any other funding authorized by these Regulations, the Board shall provide the grant amounts identified in (b) if all the following are met:

(1) The project includes energy efficiency components that conform to Subdivision (b) of Education Code Section 17077.35.

(2) The average energy efficiency score of all the buildings in the project, as determined by EnergyPro 3.1 or a similar computer program approved by the State Energy Resources Conservation and Development Commission, exceeds the nonresidential building energy efficiency standards specified in Part 6 of Title 24 of the California Code of Regulations by at least 10 percent.

(3) The DSA has reviewed the proposed project and concurs with the percentage of energy efficiency that exceeds the nonresidential building energy efficiency standards specified in Part 6 of Title 24 of the California Code of Regulations.

(4) No portion of the project will be funded with funds made available from the Renewable Energy Program administered by the State Energy Resources Conservation and Development Commission.

(5) There are funds remaining in the Energy Efficiency Fund as prescribed in Section 1859.70.1 to apportion some or the entire additional grant provided in (b).

(b) An amount equal to the lesser of (b)(1) or (b)(2):

(1) The Modernization Grant multiplied by one percent if the percentage of energy efficiency as concurred by the DSA in (a)(3) is 10 percent, or by one percent plus 0.1 percent for each 0.1 percent increment of increased energy efficiency up to 14 percent. The multiplier may not exceed five percent.

(2) The remaining funds available in the Energy Efficiency Account set aside for this Section.

If there are no funds remaining in the Energy Efficiency Account or the funds remaining in the Energy Efficiency Account are insufficient to fully fund the additional grant authorized in (b)(1), the district may either withdraw its application and resubmit it when additional funds are available in the Energy Efficiency Account or continue with the modernization project and accept a full and final apportionment without the additional grant authorized by (b)(1) or the lesser apportionment authorized by (b)(2).

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17077.35, Education Code.

HISTORY

1. New section filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 11-4-2002 order transmitted to OAL 11-4-2003 and filed 12-19-2003 (Register 2003, No. 51).
3. Amendment of subsections (a)(2) and (b)(1) and repealer of subsections (b)(1)(A)-(E) filed 2-28-2005; operative 2-28-2005 pursuant to Government Code section 11343.4 (Register 2005, No. 9).
4. Amendment of subsections (a)(2) and (a)(4) filed 8-21-2006 as an emergency; operative 8-21-2006 (Register 2006, No. 34). A Certificate of Compliance must be transmitted to OAL by 12-19-2006 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 8-21-2006 order transmitted to OAL 11-9-2006 and filed 12-18-2006 (Register 2006, No. 51).

§ 1859.78.6. Modernization Grant for 50 Year or Older Permanent Buildings.

(a) In lieu of the funding provided by Subdivision (a) of Education Code Section 17074.10 and Section 1859.78.3, the Board shall provide the amounts shown below for each pupil housed in permanent school buildings that are 50 years or older as follows:

(1) $3,120 for each elementary pupil.

(2) $3,300 for each middle school pupil.

(3) $4,320 for each high school pupil.

(4) $9,944 for each pupil that is a Severely Disabled Individual with Exceptional Needs.

(5) $6,650 for each pupil that is a Non-Severely Disabled Individual with Exceptional Needs.

(b) If the eligibility at the school site includes permanent buildings both over and under 50 years old, the number of pupils housed in 50 years or older permanent buildings, for purposes of (a) above, shall be determined by either of the following, at the district's option:

(1) A percentage of permanent classrooms that are 50 years or older to the total number of classrooms eligible for Modernization at the site determined as follows:

(A) Calculate the total number of classrooms eligible for Modernization at the site that were included in the Gross Classroom Inventory pursuant to Section 1859.31.

(B) Calculate the total number of permanent classrooms that are at least 50 years old and were not previously modernized with State funds.

(C) Divide the classrooms calculated in (b)(1)(B) by the total classrooms calculated in (b)(1)(A). Round up to the nearest one tenth of one percent.

(D) Multiply the percentage determined in (b)(1)(C) by the total modernization eligibility as determined in Option A or B on the Form SAB 50-03, for each grade group. Round up, or;

(2) A percentage of the permanent building area Square Footage that is 50 years or older to the total Square Footage eligible for Modernization at the site determined as follows:

(A) Calculate the total Square Footage building area eligible for Modernization at the site.

(B) Calculate the total permanent Square Footage of building area that is at least 50 years old and was not previously modernized with State funds.

(C) Divide the Square Footage of building area calculated in (b)(2)(B) by the total Square Footage of building area calculated in (b)(2)(A). Round up to the nearest one tenth of one percent.

(D) Multiply the percentage determined in (b)(2)(C) by the total modernization eligibility as determined in Option A or B on the Form SAB 50–03, for each grade group. Round up.

The amounts shown shall be adjusted annually in the manner prescribed in Section 1859.78. The grant is eligible for any modernization grant augmentation for which the project is otherwise eligible under the law and regulations.

For purposes of determining the age of the building, the 20 year, 25 year and the 50 year period shall begin 12 months after the original plans for the construction of the building were approved by the DSA or in the case of permanent or portable classrooms previously modernized with State funds, the 25/20 year period shall begin on the date of its previous modernization apportionment.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17074.26, Education Code.

HISTORY

1. New section filed 11–4–2002 as an emergency; operative 11–4–2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11–4–2003 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 11–4–2002 order transmitted to OAL 11–4–2003 and filed 12–19–2003 (Register 2003, No. 51).
3. Amendment of subsections (b)–(b)(1)(B), (b)(1)(D)–(b)(2)(B), (b)(2)(D) and last paragraph filed 2–3–2005; operative 2–3–2005 pursuant to Government Code section 11343.4 (Register 2005, No. 6).

§ 1859.78.7. Modernization Additional Grant for Site Development Necessary for 50 Years or Older Permanent Buildings.

In addition to any other funding authorized by these Regulations, the Board shall provide funding for upgrading existing site development (utilities) work as necessary for the modernization of 50 years or older permanent buildings equal to the lesser of (a) or (b):

(a) 60 percent of the costs necessary to upgrade utility service to 50 year or older permanent building(s) on the site as follows:

(1) Water: Replacement or repair of main water service line(s) between the utility company connection and to five feet of the 50 years or older building(s) on the site, connection fees if applicable, meter (if not provided by the serving utility), and replacement or repair of a domestic water appurtenances (i.e., well, pump, tank) as needed for the proper operation of the system.

(2) Sewage: Replacement or repair of main sewer line between the utility company connection and to five feet of the 50 years or older building(s) on the site and connection fees, if applicable. Replacement or repair of sewage appurtenances (i.e., treatment/disposal system) as needed for the proper operation of the system and a main disposal line from the treatment system to five feet of the 50 years or older building(s) on the site.

(3) Gas: Replacement or repair of main gas service line between the utility company connection and to five feet of the 50 years or older building(s) on the site, connection fee (if applicable), meter (if not provided by serving utility) or replacement or repair of gas service appurtenances (i.e., liquefied petroleum system and tank) as needed for proper operation of the system and a new main supply line from the tank to five feet of the 50 years or older building(s) on the site.

(4) Electric: Replacement or repair of electrical service between the utility company connection and the building main switchboard. Primary electric service runs between the utility company's point of connection and the transformer. Secondary electric service runs between the transformer and the main switchboard. Connection fee, transformer pads and protective devices (i.e., bollards) as required by the utility company.

(5) Communication systems (i.e., cable television and telephone): Replacement or repair of service between the utility company connection and the nearest distribution center.

(b) Twenty percent of the funding authorized by Section 1859.78.6.

The district must submit a detailed cost estimate and appropriate DSA approved plans with Form SAB 50–04 for all requests for the site development work. The cost estimate must include appropriate justification documents that indicate the work is necessary to complete the modernization of the 50 years or older building(s) that will be modernized as part of the project.

The Board will approve reasonable and appropriate site development (utilities) work that meets common engineering practices and industry standards and are consistent with the specific site conditions, if the site development costs are consistent with the most current edition of the Saylor Remodeling/Repair Construction Costs. The design professional must certify that the site development (utilities) work does not exceed the minimum requirements to develop the site to meet educational needs and/or standards.

Utility service(s) cost shall be prorated, if necessary, for any excess capacity not needed to service the 50 year or older permanent building(s).

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17074.26, Education Code.

HISTORY

1. New section filed 11–4–2002 as an emergency; operative 11–4–2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11–4–2003 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 11–4–2002 order transmitted to OAL 11–4–2003 and filed 12–19–2003 (Register 2003, No. 51).

§ 1859.78.8. Modernization Grant for Facilities Previously Modernized with State Funds.

The Board shall provide an additional apportionment provided by Education Code 17074.10(a) and Section 1859.78.3, for facilities previously modernized with State funds as follows:

(a) An additional apportionment will be provided for the modernization of a permanent school building every 25 years following the date of its previous State modernization apportionment.

(b) In the case of portable classrooms, an additional apportionment will be permitted every 20 years after the date of its previous State modernization apportionment provided the modernization funds will be used to replace the portable classroom(s) and the school district must certify that the portable classrooms will be removed from any classroom use unless acceptable documentation is provided by the district indicating that the modernization of the portable classrooms is a better use of public resources.

If the previous SFP modernization apportionment includes both permanent and portable facilities, the number of pupil grants that will be added to the site's baseline eligibility shall be determined by the percentage of permanent or portable facilities identified on the Form SAB 50–03 that generated the initial eligibility.

The capacity and eligibility of the school district will not be adjusted for the replacement of the portable classroom pursuant to Education Sections 17074.10(f) and 17073.15.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17073.15 and 17074.10, Education Code.

HISTORY

1. New section filed 2–3–2005; operative 2–3–2005 pursuant to Government Code section 11343.4 (Register 2005, No. 6).

§ 1859.78.9. Separate Apportionment for Modernization Reconfiguration Under the Small High School Program.

(a) The Board shall provide an additional apportionment pursuant to Education Code Section 17074.32 for Modernization Reconfiguration work on an existing high school site, not to exceed $500,000 for each new Small High School created from the reconfiguration, subject to OPSC verification, if all of the following criteria are met:

(1) A district shall submit an Approved Application by September 30, 2007.

(2) The current enrollment at the existing high school must be at least 1,000 pupils.

(3) At least two new Small High Schools must be created as a result of Reconfiguration.

(4) The district must obtain a county–district–school code from the Department of Education for the resulting new school sites.

(5) Funds provided under this Section shall be used only for work included in the Reconfiguration.

(b) The State funding pursuant to this Section shall continue for projects that meet subsection (a) until all available funds are exhausted. In the

event that remaining funds are insufficient to fund a Reconfiguration project in its entirety, the district will have the following options:

(1) Accept the remaining funds as a full and final apportionment; or,

(2) Refuse the funding in its entirety. If the district wishes to proceed with the Modernization portion of the application, the application will retain its received date and proceed without the Modernization Grant Separate Apportionment for Reconfiguration.

The district must maintain an enrollment, not to exceed 500 pupils, for a minimum of two complete school years after the Occupancy of the new Small High Schools.

Any additional Classrooms Provided to the campus, beyond the existing number of classrooms prior to the Reconfiguration work, shall be reduced from the district's New Construction Eligibility pursuant to Section 1859.51.

At the conclusion of the Reconfiguration project, a new Modernization Eligibility will be established at any resulting new Small High Schools.

After all qualifying projects pursuant to this Section have been apportioned, any remaining funds pursuant to Education Code Section 17074.32 shall be made available for eligible modernization projects pursuant to this Act.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17074.32, Education Code.

HISTORY

1. New section filed 3–14–2006; operative 3–14–2006 pursuant to Government Code section 11343.4 (Register 2006, No. 11).
2. Amendment of subsection (a) filed 5–17–2007; operative 5–17–2007 pursuant to Government Code section 11343.4 (Register 2007, No. 20).

§ 1859.79. Modernization Matching Share Requirement.

Except in the case of financial hardship as provided in Section 1859.81 or the modernization grant for Reconfiguration as provided in Section 1859.78.9, a district matching share for a modernization project shall be required as follows:

(a) If the Approved Application is received on or before April 29, 2002, any Modernization Grant plus any other funding provided by these Regulations shall require a district matching share equal to at least 20 percent of of those amounts which, combined with the State's Modernization Adjusted Grant, shall represent 100 percent of the total project cost.

(b) If the Approved Application is received after April 29, 2002, any Modernization Grant, plus any other funding authorized by these Regulations shall require a district matching share equal to at least 40 percent of those amounts which, combined with the State's Modernization Adjusted Grant, shall represent 100 percent of the total project cost.

The district may include as its district matching share any amounts expended on the project for an energy audit made pursuant to Education Code Section 17077.10 and any amounts applied to the project for incentive grants or rebates received by the district from a program funded pursuant to Public Utilities Code Section 381.

The district's modernization matching share shall not be expended on costs included in a Reconfiguration project pursuant to Section 1859.78.9.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17074.15, 17074.16, 17074.32 and 17077.10, Education Code.

HISTORY

1. New section filed 12–3–98 as an emergency; operative 12–3–98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4–2–99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3–31–99 as an emergency; operative 3–31–99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7–29–99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7–29–99 as an emergency; operative 7–29–99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11–26–99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7–29–99 order transmitted to OAL 8–26–99 and filed 10–8–99 (Register 99, No. 41).
5. New second paragraph and amendment of NOTE filed 6–26–2000; operative 6–26–2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
6. Amendment of section and NOTE filed 9–16–2002 as an emergency; operative 9–16–2002 (Register 2002, No. 38). A Certificate of Compliance must be transmitted to OAL by 1–14–2003 or emergency language will be repealed by operation of law on the following day.
7. Amendment filed 11–4–2002 as an emergency; operative 11–4–2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11–4–2003 or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 9–16–2002 order transmitted to OAL 1–7–2003 and filed 2–19–2003 (Register 2003, No. 8).
9. Amendment of subsections (a) and (b) filed 2–27–2003 as an emergency; operative 2–27–2003 (Register 2003, No. 9). A Certificate of Compliance must be transmitted to OAL by 6–27–2003 or emergency language will be repealed by operation of law on the following day.
10. Amendment of subsections (a) and (b) refiled 6–19–2003 as an emergency; operative 6–19–2003 (Register 2003, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–17–2003 or emergency language will be repealed by operation of law on the following day.
11. Amendment of subsections (a) and (b) refiled 10–10–2003 as an emergency; operative 10–10–2003 (Register 2003, No. 41). A Certificate of Compliance must be transmitted to OAL by 2–9–2004 or emergency language will be repealed by operation of law on the following day.
12. Certificate of Compliance as to 11–4–2002 order transmitted to OAL 11–4–2003 and filed 12–19–2003 (Register 2003, No. 51).
13. Certificate of Compliance as to 10–10–2003 order transmitted to OAL 2–9–2004 and filed 3–23–2004 (Register 2004, No. 13).
14. Amendment of first paragraph, new final paragraph and amendment of NOTE filed 3–14–2006; operative 3–14–2006 pursuant to Government Code section 11343.4 (Register 2006, No. 11).

§ 1859.79.1. Modernization Reimbursement.

The Board will not provide Modernization funding for a project if the district entered into a construction contract for that project before August 27, 1998 unless:

(a) The project met the provisions for funding under the LPP pursuant to Sections 1859.14 or 1859.15; or

(b) The project was approved on the Year–Round Schools Air Conditioning/Insulation Program unfunded approval list pursuant to Education Code Section 42250.1.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35, 17074.10 and 42250.1, Education Code.

HISTORY

1. New section filed 12–3–98 as an emergency; operative 12–3–98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4–2–99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3–31–99 as an emergency; operative 3–31–99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7–29–99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7–29–99 as an emergency; operative 7–29–99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11–26–99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7–29–99 order transmitted to OAL 8–26–99 and filed 10–8–99 (Register 99, No. 41).
5. Amendment of first paragraph filed 1–2–2001 as an emergency; operative 1–2–2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5–2–2001 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 1–2–2001 order transmitted to OAL 5–1–2001 and filed 6–13–2001 (Register 2001, No. 24).

§ 1859.79.2. Use of Modernization Grant Funds.

The Modernization Grant plus any other funds provided by these Regulations shall be expended as set forth in Education Code Sections 17074.25, 17074.10(f) and 17070.15(f) and may also be utilized for other purposes as set forth in Education Code Section 100420(c). Modernization funding may also be used for the costs incurred by the district directly or through a contract with a third party provider for the initiation and enforcement of a LCP. Modernization funding, with the exception of savings, is limited to expenditure on the specific site where the modernization grant eligibility was generated. The grant may not be used for the following:

(a) New building area with the exception of the following:

(1) Replacement building area of like kind. Additional classrooms constructed within the replacement area will reduce the new construction baseline eligibility for the district.

(2) Building area required by the federal Americans with Disabilities Act (ADA) or by the Division of the State Architect's (DSA) handicapped access requirements.

(b) New site development items with the exception of:

(1) Replacement, repair or additions to existing site development.

(2) Site development items required by the federal ADA Act or by the DSA's handicapped access requirements.

(c) the evaluation and removal of hazardous or solid waste and/or hazardous substances when the Department of Toxic Substance Control has determined that the site contains dangerous levels of a hazardous substance, hazardous waste, or both that exceed ten percent of the combined adjusted grant and the district matching share for the project.

(d) Leased facilities not owned by another district or a county superintendent.

(e) Costs associated with Reconfiguration pursuant to Section 1859.78.9.

Modernization Grant funds may be used on any school facilities on the site, with the exception of portable classroom facilities eligible for an additional apportionment pursuant to Education Code Sections 17073.15 and 17074.10(f) and as defined in Section 1859.78.8. If the classroom facilities on the site include areas that are currently ineligible for modernization, it will not disqualify those facilities from future modernization funding.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.15, 17074.25, 17074.32 and 100420(c), Education Code.

HISTORY

1. New section filed 12–3–98 as an emergency; operative 12–3–98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4–2–99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3–31–99 as an emergency; operative 3–31–99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7–29–99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7–29–99 as an emergency; operative 7–29–99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11–26–99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7–29–99 order, including amendment of section and NOTE, transmitted to OAL 8–26–99 and filed 10–8–99 (Register 99, No. 41).
5. Amendment of first paragraph filed 11–4–2002 as an emergency; operative 11–4–2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11–4–2003 or emergency language will be repealed by operation of law on the following day.
6. Amendment of first paragraph filed 8–25–2003 as an emergency; operative 8–25–2003 (Register 2003, No. 35). A Certificate of Compliance must be transmitted to OAL by 12–23–2003 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 11–4–2002 order transmitted to OAL 11–4–2003 and filed 12–19–2003 (Register 2003, No. 51).
8. Reinstatement of section as it existed prior to 8–25–2003 emergency amendment by operation of Government Code section 11346.1(f) (Register 2004, No. 9).
9. Amendment of first paragraph and subsection (a)(2) filed 12–20–2004 as an emergency; operative 12–20–2004 (Register 2004, No. 52). A Certificate of Compliance must be transmitted to OAL by 4–19–2005 or emergency language will be repealed by operation of law on the following day.
10. Amendment of first paragraph and repealer of penultimate paragraph filed 2–3–2005; operative 2–3–2005 pursuant to Government Code section 11343.4 (Register 2005, No. 6).
11. Certificate of Compliance as to 12–20–2004 order transmitted to OAL 4–19–2005 and filed 5–12–2005 (Register 2005, No. 19).
12. New subsection (j) and amendment of NOTE filed 3–14–2006; operative 3–14–2006 pursuant to Government Code section 11343.4 (Register 2006, No. 11).

§ 1859.79.3. Minimal Requests for Modernization Grant Funds.

With the exception of Approved Applications that meet the requirements of Section 1859.107(a), districts seeking a Modernization Grant must submit Form SAB 50–04 for at least 101 grants, or the remaining modernization eligibility at the school site if less than 101 grants.

Form SAB 50–04 requesting Modernization Grant funds that do not meet the above criteria will not be accepted by the SAB.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17074.15, 17074.16, 17074.25 and 100420(c), Education Code.

HISTORY

1. New section filed 9–12–2000; operative 9–12–2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 37).
2. Amendment filed 1–2–2001 as an emergency; operative 1–2–2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5–2–2001 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 1–2–2001 order transmitted to OAL 5–1–2001 and filed 6–13–2001 (Register 2001, No. 24).
4. Amendment filed 7–25–2001; operative 7–25–2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).
5. Amendment section filed 8–13–2001; operative 8–13–2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).
6. Amendment filed 4–10–2002; operative 4–10–2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).
7. Amendment filed 5–2–2002; operative 6–1–2002 (Register 2002, No. 18).
8. Amendment filed 8–12–2002 as an emergency; operative 8–12–2002 (Register 2002, No. 33). A Certificate of Compliance must be transmitted to OAL by 12–10–2002 or emergency language will be repealed by operation of law on the following day.
9. Amendment of section and NOTE filed 9–16–2002 as an emergency; operative 9–16–2002 (Register 2002, No. 38). A Certificate of Compliance must be transmitted to OAL by 1–14–2003 or emergency language will be repealed by operation of law on the following day.
10. Amendment filed 11–4–2002 as an emergency; operative 11–4–2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11–4–2003 or emergency language will be repealed by operation of law on the following day.
11. Certificate of Compliance as to 8–12–2002 order transmitted to OAL 12–3–2002 and filed 1–16–2003 (Register 2003, No. 3).
12. Certificate of Compliance as to 9–16–2002 order transmitted to OAL 1–7–2003 and filed 2–19–2003 (Register 2003, No. 8).
13. Certificate of Compliance as to 11–4–2002 order transmitted to OAL 11–4–2003 and filed 12–19–2003 (Register 2003, No. 51).

Article 9. Hardship Assistance

§ 1859.80. General.

A district shall qualify for hardship assistance by demonstrating one or more of the following:

(a) A financial hardship, as provided in Section 1859.81, which prevents the district from funding all or a portion of the matching share requirement for a SFP grant.

(b) A facility Hardship Grant as provided in Section 1859.82.

(c) An Excessive Cost Hardship Grant as a result of added construction costs due to unusual circumstances as provided in Section 1859.83.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17075.10 and 17070.15, Education Code.

HISTORY

1. New article 9 (sections 1859.80–1859.83) and section filed 12–3–98 as an emergency; operative 12–3–98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4–2–99 or emergency language will be repealed by operation of law on the following day.
2. New article 9 (sections 1859.80–1859.83) and section refiled 3–31–99 as an emergency; operative 3–31–99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7–29–99 or emergency language will be repealed by operation of law on the following day.
3. New article 9 (sections 1859.80–1859.83) and section refiled 7–29–99 as an emergency; operative 7–29–99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11–26–99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7–29–99 order transmitted to OAL 8–26–99 and filed 10–8–99 (Register 99, No. 41).
5. Amendment of subsection (b) filed 11–4–2002 as an emergency; operative 11–4–2002 (Register 2002, No. 45). Pursuant to Education Code section

17070.35 a Certificate of Compliance must be transmitted to OAL by 11–4–2003 or emergency language will be repealed by operation of law on the following day.

6. Certificate of Compliance as to 11–4–2002 order transmitted to OAL 11–4–2003 and filed 12–19–2003 (Register 2003, No. 51).

§ 1859.81. Financial Hardship.

Except for Joint–Use Projects and Career Technical Educational Facilities Projects, a district is eligible for financial hardship to fund all or a portion of its matching share requirement after demonstrating the requirements of (a), (c), and (d) below:

(a) The district is financially unable to provide all necessary matching funds for an eligible project. To determine this, an analysis shall be made of the district's financial records by the OPSC including data and records maintained by the CDE and the County Office of Education. The analysis shall consist of a review of the district's latest Independent Audit regarding funds available from all capital facility accounts, including, but not limited to, developer fees, funds generated from capital facility certificates of participation, federal grants, redevelopment funds, sale proceeds from surplus property, the appraised value of facilities approved for replacement pursuant to Section 1859.82, bond funds either encumbered, unencumbered or authorized but unsold, and savings from other SFP projects. All funds thus identified that have not been expended or encumbered by a contractual agreement for a specific capital outlay purpose prior to the initial request for financial hardship status shall be deemed available as a matching contribution.

After the initial request for financial hardship status is granted, no further encumbrances will be approved by the OPSC and all prospective revenue made available to the district's capital facility accounts shall be deemed available as matching contribution on the subsequent financial hardship review, with the exception of:

(1) Approved interim housing expenditures.

(2) Funding to pay for previously recognized multi–year encumbrances approved at the initial financial hardship approval.

(3) Funding that is transferred into a Special Reserve Fund and is used for the express purpose of the Federal Renovation Program when the amount expended out of that fund does not exceed the maximum Federal Renovation Grant amount.

(4) Funding that is transferred into a Special Reserve Fund and is used for the express purpose of the School Facilities Needs Assessment Grant Program or Emergency Repair Program when the amount expended out of that fund does not exceed the maximum grant amount apportioned.

(5) Funding that is transferred into a Special Reserve Fund and is used for the express purpose of the Career Technical Education Facilities Program when the amount expended out of that fund does not exceed the applicant's share of the maximum grant amount apportioned.

(6) Funding that is transferred into a Special Reserve Fund and used for the express purpose of the Overcrowding Relief Grant when the amount expended out of that fund does not exceed the amount of the site acquisition and design costs of the project and the district has submitted an approved Form SAB 50–11.

(7) Funding that is used for the express purpose of reimbursing the State a proportionate share of financial hardship received when there has been a transfer of a special education program and title to the facility. In addition, the funding was used within five years of the title transfer.

(8) Funding to pay for obtaining a structural report pursuant to Section 1859.82 for an approvable and funded seismic mitigation project.

(9) All other capital facility funding for a period of three years when no subsequent financial hardship request is made during this period, with the exception of the funding identified in (6). The three–year period begins with the date of the most recent financial hardship new construction or modernization adjusted grant funding apportionment.

When Overcrowding Relief Grant funding is set aside pursuant to (6) and the School District has not submitted, or the OPSC has not accepted, a Form SAB 50–04 for an Overcrowding Relief Grant within three years from the date of deposit into the Special Reserve Fund, or the School District has not met the requirements in Sections 1859.90 or 1859.105, remaining funds plus interest accrued at the Pooled Money Investment Board rate at that time period shall be deemed available as matching contribution on a subsequent financial hardship project or be captured through an audit adjustment pursuant to Section 1859.106.

The financial hardship analysis is subject to approval by the Board.

(b) From the funds deemed available as a matching contribution, the district may retain $19,776 per classroom in each enrollment reporting period for the cost to provide interim housing for the currently unhoused pupils of the district. The amount shown shall be adjusted annually in the manner prescribed in Section 1859.71. The number of classrooms needed for interim housing for the currently unhoused pupils shall be the sum of the positive numbers determined in (b)(7) as follows:

(1) Determine the current enrollment of the district by grade level as shown on the latest Form SAB 50–01.

(2) Determine the New Construction Grants apportioned by grade level for all SFP projects and LPP funded under the provisions of Sections 1859.12 or 1859.13 where the district has submitted Form SAB 50–06 indicating that the project is 100 percent complete.

(3) Subtract (b)(2) from (b)(1).

(4) Determine the number of classrooms by grade level reported in Part I, Line 8 on Form SAB 50–02.

(5) Multiply the classrooms determined in (b)(4) by 25 for K–6, 27 for 7–12, 13 for Non–Severe and 9 for Severe.

(6) Subtract the product determined in (b)(5) from the difference determined in (b)(3) by grade level.

(7) Divide the difference by grade level determined in (b)(6) by 25 for K–6, 27 for 7–12, 13 for Non–Severe and 9 for Severe and round up to the nearest whole number.

From the funds deemed available as a matching contribution, the district may also retain $19,776 per portable toilet unit in each reporting period for the cost to provide necessary interim toilet facilities for the currently unhoused pupils of the district. The amount shown shall be adjusted annually in the manner prescribed in Section 1859.71. The number of toilet facilities needed for interim housing shall be the sum of the positive numbers determined in (b)(7) divided by eight rounded up to the nearest whole number.

From the funds deemed available as a matching contribution, the district may also retain $19,776 per classroom in each reporting period for the cost to provide necessary interim housing for the currently unhoused pupils displaced as a result of a SAB approved seismic mitigation project pursuant to Section 1859.82. The amount shown shall be adjusted annually in the manner prescribed in Section 1859.71. The number of classrooms needed for interim housing shall be the quotient of the displaced pupils by 25 for K–6, for 27 for 7–12, 13 for Non–Severe and 9 for Severe and round up to the nearest whole number.

If the district's available funds, as determined by the OPSC analysis less costs for interim housing, is less than its matching share, the district will be deemed to have met the requirements of this Subsection.

(c) The district has made all reasonable efforts to fund its matching share of the project by demonstrating it is levying the developer fee justified under law or an alternative revenue source equal to or greater than the developer fee otherwise justified under law at the time of request for hardship and the district meets at least one of the following:

(1) The current outstanding bonded indebtedness of the district issued for the purpose of constructing school facilities in accordance with Education Code Section 17072.35 or 17074.25 as appropriate, at the time of request for financial hardship status, is at least 60 percent of the district's total bonding capacity. Outstanding bonded indebtedness includes that part of general obligation bonds, Mello–Roos Bonds, School Facility Improvement District Bonds and certificates of participation which the district is paying a debt service that was issued for capital outlay school facility purposes.

(2) The district had a successful registered voter bond election for at least the maximum amount allowed under Proposition 39 within the previous two years from the date of request for financial hardship status. The proceeds from the bond election that represent the maximum amount allowed under the provisions of Proposition 39 must be used to fund the district's matching share requirement for SFP project(s).

(3) It is a County Superintendent of Schools.

(4) The district's total bonding capacity at the time of the request for financial hardship status is $5 million or less.

(5) Other evidence of reasonable effort as approved by the SAB.

If the district's request for financial hardship status is denied by the Board, the district may be deemed eligible for rental payments of $2,000 per year per classroom under the Emergency School Classroom Law of 1979 for a two year period when relocatable classroom buildings are available and the district provides financial documentation that it is unable to afford the full rental amount and any other information satisfactory to the Board that the rental reduction is necessary. The number of classrooms eligible for the $2,000 rental payments shall be the sum of the numbers determined in (c)(5)(B) as follows:

(A) Determine the number of pupils by grade level that the district requested a New Construction Grant on the Form SAB 50–04 that were denied financial hardship status.

(B) Divide the number by grade level determined in (c)(5)(A) by 25 for K–6, 27 for 7–12, 13 for Non–Severe and 9 for Severe and round up to the nearest whole number.

(d) The district has not signed a contract for acquisition or construction of classrooms that replace existing facility(ies), which were included in the determination of the district's new construction eligibility pursuant to Education Code Section 17071.75, in a locally funded project during the five–year period immediately preceding the district's application for financial hardship assistance. This restriction may be lifted if the Board finds that unforeseen and extenuating circumstances existed that required the district to use local funds to replace the facility(ies).

If the district meets the financial hardship requirements in this Section, the amount of financial hardship is equal to the district's matching share less funds deemed available in (a).

Once a district has been notified by the OPSC that it meets the requirements of financial hardship in this Section, the district may file Form SAB 50–04 under the provisions of financial hardship anytime within a period of 180 calendar days from the date of the OPSC notification.

If the district does not submit Form SAB 50–04 under the provisions of financial hardship within 180 calendar days of the OPSC notification of approval of financial hardship status, the district must re–qualify for financial hardship status under the provisions of this Section by submittal of a new request for financial hardship status.

If the district submits Form SAB 50–04 within 180 calender days of the OPSC notification of approval of financial hardship and the project(s) has been included on an unfunded list for more than 180 calendar days, a review of the district's funds pursuant to (a) will be made to determine if additional district funds are available to fund the district's matching share of the project(s).

Financial hardship approval status by the OPSC for a separate design and/or site apportionment does not apply to any subsequent funding for the project(s).

NOTE: Authority cited: Sections 17070.35, 17075.15, 17078.72 and 17592.73, Education Code. Reference: Sections 17071.75, 17075.10, 17075.15 and 17079.20, Education Code.

HISTORY

1. New section filed 12–3–98 as an emergency; operative 12–3–98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4–2–99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3–31–99 as an emergency; operative 3–31–99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7–29–99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7–29–99 as an emergency; operative 7–29–99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11–26–99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7–29–99 order, including amendment of section, transmitted to OAL 8–26–99 and filed 10–8–99 (Register 99, No. 41).
5. Amendment of subsection (b)(5) filed 6–26–2000; operative 6–26–2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
6. Amendment of last paragraph filed 7–17–2000 as an emergency; operative 7–17–2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11–14–2000 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 7–17–2000 order transmitted to OAL 11–9–2000 and filed 12–27–2000 (Register 2000, No. 52).
8. Amendment of last paragraph filed 1–2–2001 as an emergency; operative 1–2–2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5–2–2001 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 1–2–2001 order transmitted to OAL 5–1–2001 and filed 6–13–2001 (Register 2001, No. 24).
10. Amendment of last paragraph filed 7–25–2001; operative 7–25–2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).
11. Amendment of last paragraph filed 8–13–2001; operative 8–13–2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).
12. Amendment filed 12–21–2001; operative 12–21–2001 pursuant to Government Code section 11343.4 (Register 2001, No. 51).
13. Amendment of subsections (a)(1), (a)(4) and (b)(5)(A)–(B) filed 4–10–2002; operative 4–10–2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).
14. Amendment of subsection (b)(5)(A)–(B) filed 5–2–2002; operative 6–1–2002 (Register 2002, No. 18).
15. Amendment of subsection (b)(5)(A) and second, third and fourth from last paragraphs filed 8–12–2002 as an emergency; operative 8–12–2002 (Register 2002, No. 33). A Certificate of Compliance must be transmitted to OAL by 12–10–2002 or emergency language will be repealed by operation of law on the following day.
16. Amendment filed 10–4–2002; operative 10–4–2002 pursuant to Government Code section 11343.4 (Register 2002, No. 40).
17. Amendment of section and NOTE filed 11–4–2002 as an emergency; operative 11–4–2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11–4–2003 or emergency language will be repealed by operation of law on the following day.
18. Certificate of Compliance as to 8–12–2002 order transmitted to OAL 12–3–2002 and filed 1–16–2003 (Register 2003, No. 3).
19. Certificate of Compliance as to 11–4–2002 order transmitted to OAL 11–4–2003 and filed 12–19–2003 (Register 2003, No. 51).
20. Amendment of first paragraph filed 5–21–2004 as an emergency; operative 5–21–2004 (Register 2004, No. 21). A Certificate of Compliance must be transmitted to OAL by 9–20–2004 or emergency language will be repealed by operation of law on the following day.
21. Certificate of Compliance as to 5–21–2004 order transmitted to OAL 9–20–2004 and filed 11–2–2004 (Register 2004, No. 45).
22. Amendment of subsection (c)(1) filed 2–15–2005; operative 2–15–2005 pursuant to Government Code section 11343.4 (Register 2005, No. 7).
23. New subsection (a)(4), subsection renumbering and amendment of NOTE filed 5–26–2005 as an emergency; operative 5–26–2005 (Register 2005, No. 21). A Certificate of Compliance must be transmitted to OAL by 9–23–2005 or emergency language will be repealed by operation of law on the following day.
24. Certificate of Compliance as to 5–26–2005 order transmitted to OAL 9–19–2005 and filed 10–31–2005 (Register 2005, No. 44).
25. Amendment of first paragraph, new subsection (a)(5), subsection renumbering and amendment of NOTE filed 7–13–2007 as an emergency; operative 7–13–2007 (Register 2007, No. 28). Pursuant to Education Code section 17078.72(k) a Certificate of Compliance must be transmitted to OAL by 7–14–2008 or emergency language will be repealed by operation of law on the following day.
26. Amendment of first paragraph and new subsection (d) filed 7–18–2007; operative 7–18–2007 pursuant to Government Code section 11343.4 (Register 2007, No. 29).
27. New subsection (a)(6), subsection renumbering, amendment of and new paragraph following newly designated subsection (a)(7) and amendment of NOTE filed 8–31–2007; operative 8–31–2007 pursuant to Government Code section 11343.4 (Register 2007, No. 35).
28. Editorial correction of HISTORY 25 (Register 2007, No. 52).
29. New subsection (a)(7), subsection renumbering and amendment of NOTE filed 1–7–2008; operative 2–6–2008 (Register 2008, No. 2).
30. Certificate of Compliance as to 7–13–2007 order transmitted to OAL 3–18–2008 and filed 4–29–2008 (Register 2008, No. 18).
31. New subsection (a)(8), subsection relettering, amendment of subsections (b)(7), (c)(5) and (d) filed 4–30–2008; operative 4–30–2008 pursuant to Government Code section 11343.4 (Register 2008, No. 18).

§ 1859.81.1. Separate Apportionment for Site Acquisition and Design Costs.

A district that meets the financial hardship criteria in Section 1859.81 is eligible for the following:

(a) For a new construction project, a separate apportionment for site acquisition, with the exception of site acquisition funding authorized by

Section 1859.81.2 or for projects receiving funding pursuant to the Overcrowding Relief Grant, Section 1859.180, when all of the following requirements are met:

(1) The district has eligibility for grants that equal at least 50 percent of the CDE master plan capacity of the site.

(2) The district has received a contingent site approval letter from the CDE indicating that the proposed site is the best available.

(3) The district has obtained a preliminary appraisal of the property by a qualified appraiser utilizing criteria outlined in Section 1859.74.1. This report may be made without access to the site.

(b) If the conditions in (a) are met on a site that does not require a RA, the Board will apportion all of the following less any district funds available for the project pursuant to Section 1859.81(a):

(1) An amount not to exceed 100 percent of the lesser of the preliminary appraised value of the site as determined by Section 1859.74.1 or the amount the district reasonably expects to pay for the site including any hazardous material clean–up.

(2) The estimated relocation expenses that will conform to Title 25, California Code of Regulations, Section 6000, et seq. The reasonable and necessary relocation costs for purchasing fixtures and equipment, personal property, new machinery/equipment, and the installation of any improvements at the replacement residence or business location may be included as relocation assistance.

(3) Four percent of the lesser of the preliminary appraised value of the site or the amount the district reasonably expects to pay for the site acquisition including any hazardous material clean–up but not less than $50,000.

(4) The estimated DTSC costs for review, approval, and oversight of the POESA and the PEA.

(c) If the conditions in (a) are met on a site that will require a RA, the district is eligible for a separate site apportionment not to exceed 50 percent of one and one half times the value of an appraisal that conforms to Section 1859.74.1 for the costs included in (c)(1) and (c)(4) plus the additional costs included in (c)(2) and (c)(3). The costs included in (c)(2) and (c)(3) are in addition to 50 percent of one and one half times the appraisal value cap.

(1) The cost of the site as determined in Section 1859.74.1 and the amount the district reasonably expects to pay for any hazardous materials/waste removal and/or remediation costs for the site.

(2) Fifty percent of the estimated relocation expenses that will conform to Title 25, California Code of Regulations, Section 6000, et seq. The reasonable and necessary relocation costs for purchasing fixtures and equipment, personal property, new machinery/equipment, and the installation of any improvements at the replacement residence or business location may be included as relocation assistance.

(3) Fifty percent of four percent of the lesser of the appraised value of the site or the amount the district reasonably expects to pay for the site acquisition including any hazardous materials/waste removal and/or remediation costs for the site, but not less than 50 percent of $50,000.

(4) The estimated DTSC costs for review, approval and oversight of the POESA and the PEA.

(d) The limitation of 50 percent of one and one half times the value of an appraisal for costs in subsections (c), (c)(1) and (c)(4) may be exceeded when the Board finds that unforeseen circumstances exist, and when both of the following exist:

(1) CDE determines that the site is the best available site for meeting the educational and safety needs of the School District.

(2) Substantiation that the costs are limited to the minimum required to complete the evaluation and RA approved by the DTSC.

(e) For new construction projects, the Board will apportion an amount not to exceed 40 percent of the new construction grant less any district funds available for the project pursuant to Section 1859.81(a). For modernization projects, the Board will apportion an amount not to exceed the following:

(1) If the Approved Application is received on or before April 29, 2002, 20 percent of the modernization grant less any district funds available for the project pursuant to Section 1859.81(a).

(2) If the Approved Application is received after April 29, 2002, 25 percent of the modernization grant less any district funds available for the project pursuant to Section 1859.81(a).

The amount apportioned is an estimate of the funds needed for design, engineering, and other pre–construction project costs.

Qualifying districts may request a separate apportionment for the design and for site acquisition for the same new construction project. Those projects requesting an Overcrowding Relief Grant, pursuant to Section 1859.180, do not qualify for these separate apportionments.

The amount provided as a separate apportionment shall be offset from the New Construction Adjusted Grant or the Modernization Adjusted Grant amount the district would otherwise be eligible for pursuant to Sections 1859.70 and 1859.81 when the district submits Form SAB 50–04. A district seeking a separate apportionment for site acquisition or design costs shall submit Form SAB 50–04. If a new construction project received a previous design apportionment, the district may request an additional design apportionment for that project up to the 40 percent maximum design apportionment allowed pursuant to this Section.

The Form SAB 50–04 that is subsequently submitted for the New Construction Adjusted Grant must be for at least 50 percent of the New Construction Grant the district requested as a separate design apportionment.

The Form SAB 50–04 that is subsequently submitted for the Modernization Adjusted Grant must be for at least 80 percent of the Modernization Grant the district requested as a separate design apportionment that was received on or before April 29, 2002.

The Form SAB 50–04 that is subsequently submitted for the Modernization Adjusted Grant must be for at least 60 percent of the Modernization Grant the district requested as a separate design apportionment that was received after April 29, 2002.

When the Board is accepting applications pursuant to Section 1859.95, the funding of the new construction or modernization grant may be made from funds set aside by the Board for financial hardship. The amount provided as a separate apportionment shall be adjusted at a future date to assure that hardship funding for the project does not exceed the amount the district was otherwise eligible to receive.

NOTE: Authority cited: Sections 17070.35, 17072.13 and 17075.15, Education Code. Reference: Sections 17072.12, 17072.20, 17072.33, 17074.15, 17074.16 and 17079.20, Education Code.

HISTORY

1. New section filed 12–3–98 as an emergency; operative 12–3–98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4–2–99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3–31–99 as an emergency; operative 3–31–99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7–29–99 or emergency language will be repealed by operation of law on the following day.
3. Amendment of last paragraph filed 7–12–99 as an emergency; operative 7–12–99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11–9–99 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 7–29–99 as an emergency; operative 7–29–99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11–26–99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7–29–99 order, including amendment of section, transmitted to OAL 8–26–99 and filed 10–8–99 (Register 99, No. 41).
6. Certificate of Compliance as to 7–12–99 order, including further amendments, transmitted to OAL 11–5–99 and filed 12–22–99 (Register 99, No. 52).
7. Amendment of subsection (b) filed 3–13–2000; operative 4–12–2000 (Register 2000, No. 11).
8. Amendment of section and NOTE filed 6–26–2000; operative 6–26–2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
9. Amendment of last two paragraphs filed 7–17–2000 as an emergency; operative 7–17–2000 (Register 2000, No. 29). A Certificate of Compliance must be trans-

mitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.

10. Amendment of subsection (c) and amendment of penultimate paragraph filed 9-12-2000; operative 9-12-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 37).
11. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
12. Amendment of last two paragraphs of subsection (c) filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
13. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
14. Amendment of last two paragraphs filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).
15. Amendment of last two paragraphs filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).
16. Amendment of subsection (c) filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).
17. Amendment of last two paragraphs filed 5-2-2002; operative 6-1-2002 (Register 2002, No. 18).
18. Amendment of last two paragraphs filed 8-12-2002 as an emergency; operative 8-12-2002 (Register 2002, No. 33). A Certificate of Compliance must be transmitted to OAL by 12-10-2002 or emergency language will be repealed by operation of law on the following day.
19. Amendment of section and NOTE filed 9-16-2002 as an emergency; operative 9-16-2002 (Register 2002, No. 38). A Certificate of Compliance must be transmitted to OAL by 1-14-2003 or emergency language will be repealed by operation of law on the following day.
20. Amendment of last five paragraphs filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.
21. Certificate of Compliance as to 8-12-2002 order transmitted to OAL 12-3-2002 and filed 1-16-2003 (Register 2003, No. 3).
22. Amendment of subsection (a) and amendment of NOTE filed 2-6-2003; operative 2-6-2003 pursuant to Government Code section 11343.4 (Register 2003, No. 6).
23. Certificate of Compliance as to 9-16-2002 order transmitted to OAL 1-7-2003 and filed 2-19-2003 (Register 2003, No. 8).
24. Amendment of subsection (b), new subsections (c)-(d)(2), subsection relettering, and amendment of newly designated subsections (e)(1)-(2) filed 2-27-2003 as an emergency; operative 2-27-2003 (Register 2003, No. 9). A Certificate of Compliance must be transmitted to OAL by 6-27-2003 or emergency language will be repealed by operation of law on the following day.
25. Amendment of subsection (b), new subsections (c)-(d)(2), subsection relettering, and amendment of newly designated subsections (e)(1)-(2) refiled 6-19-2003 as an emergency; operative 6-19-2003 (Register 2003, No. 25). A Certificate of Compliance must be transmitted to OAL by 10-17-2003 or emergency language will be repealed by operation of law on the following day.
26. Amendment of subsection (b), new subsections (c)-(d)(2), subsection relettering, and amendment of newly designated subsections (e)(1)-(2) refiled 10-10-2003 as an emergency; operative 10-10-2003 (Register 2003, No. 41). A Certificate of Compliance must be transmitted to OAL by 2-9-2004 or emergency language will be repealed by operation of law on the following day.
27. Certificate of Compliance as to 11-4-2002 order transmitted to OAL 11-4-2003 and filed 12-19-2003 (Register 2003, No. 51).
28. Certificate of Compliance as to 10-10-2003 order transmitted to OAL 2-9-2004 and filed 3-23-2004 (Register 2004, No. 13).
29. Amendment of subsection (a) and second paragraph following subsection (e)(2) and amendment of NOTE filed 8-31-2007; operative 8-31-2007 pursuant to Government Code section 11343.4 (Register 2007, No. 35).

§ 1859.81.2. Separate Apportionment for District-Owned Site Acquisition Costs.

A district that meets the financial hardship criteria in Section 1859.81, with the exception of those projects requesting an Overcrowding Relief Grant pursuant to Section 1859.180, is eligible for the following:

(a) A separate apportionment for district-owned site acquisition cost authorized by Section 1859.74.5 when all the following are met:

(1) The district has eligibility for new construction grants that equal at least 50 percent of the CDE master plan capacity of the site.

(2) All the criteria in Section 1859.74.5(a)(1) through (a)(7) are met.

(b) If the conditions in (a) are met, the Board will apportion one half of the value of the district-owned site as determined in Section 1859.74.5(b).

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17072.12, 17072.13, 17072.20 and 17079.20, Education Code.

HISTORY

1. New section filed 2-6-2003; operative 2-6-2003 pursuant to Government Code section 11343.4 (Register 2003, No. 6).
2. Amendment of first paragraph and subsection (a)(2) and amendment of NOTE filed 8-31-2007; operative 8-31-2007 pursuant to Government Code section 11343.4 (Register 2007, No. 35).

§ 1859.81.3. Use of District-Owned Site Acquisition Apportionment.

Any funds authorized by Sections 1859.74.5 or 1859.81.2 shall be expended in accordance with Education Code Section 17072.35 and may also be used for the relocation of district facilities necessary as a result of Subdivision (b) of Education Code Section 17072.12.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17072.12, 17072.20 and 17072.35, Education Code.

HISTORY

1. New section filed 2-6-2003; operative 2-6-2003 pursuant to Government Code section 11343.4 (Register 2003, No. 6).

§ 1859.82. Facility Hardship.

A district is eligible for facility hardship funding to replace or construct new classrooms and related facilities if the district demonstrates there is an unmet need for pupil housing or the condition of the facilities, or the lack of facilities, is a threat to the health and safety of the pupils. A facility hardship is available for:

(a) New classrooms and/or subsidiary facilities (corridors, toilets, kitchens and other non-classroom space) or replacement facilities if either (1) or (2) are met:

(1) The facilities are needed to ensure the health and safety of the pupils if the district can demonstrate to the satisfaction of the Board that the health and safety of the pupils is at risk. Factors to be considered by the Board shall include the close proximity to a major freeway, airport, electrical facility, high power transmission lines, dam, pipeline, industrial facility, adverse air quality emission or other health and safety risks, including structural deficiencies required by the DSA to be repaired, seismic mitigation of the Most Vulnerable Category 2 Buildings as verified by the DSA, traffic safety or because the pupils reside in remote areas of the district and transportation to existing facilities is not possible or poses a health and safety risk. The total available funding for seismic mitigation related and ancillary costs for the Most Vulnerable Category 2 Buildings is $199.5 million for projects where the construction contract was executed on or after May 20, 2006, and the project funding provided shall be for the minimum work necessary to obtain DSA approval.

(A) If the request is for replacement facilities, a cost/benefit analysis must be prepared by the district and submitted to the OPSC that indicates the total costs to remain in the classroom or related facility and mitigate the problem is at least 50 percent of the Current Replacement Cost of the classroom or related facility. The cost/benefit analysis may include applicable site development costs as outlined in Section 1859.76. If the cost to remain in the classroom or related facility is less than 50 percent of the Current Replacement Cost, the district may qualify for a Modernization Excessive Cost Hardship Grant for rehabilitation costs pursuant to Section 1859.83(e) or a grant not to exceed 50 percent of the cost estimate that has been reviewed and approved by the OPSC and approved by the board for seismic rehabilitation.

(B) If the request is for replacement facilities that included structural and/or seismic deficiencies, the cost/benefit analysis must also include a report from a licensed design professional identifying the minimum work necessary to obtain DSA approval. The report must contain a detailed cost estimate of the repairs. The report and cost estimate shall be subject to review by the OPSC for conformance with the Saylor Current Construction Cost Publication and, at the OPSC's discretion, the DSA. For seismic deficiencies of the Most Vulnerable Category 2 Buildings, the report and the cost estimate for the minimum work necessary must be reviewed by the DSA.

(2) The classroom or related facility was lost or destroyed as a result of a disaster such as fire, flood or earthquake and the district has demon-

strated satisfactorily to the Board that the classroom or related facility was uninsurable or the cost for insurance was prohibitive.

If the district qualifies for a new or replacement school pursuant to either (1) or (2) above, the district is eligible for a New Construction Grant as a new construction project for the lesser of the pupils housed in the replaced facility based on loading standards pursuant to Education Code Section 17071.25(a)(2) or the latest CBEDS enrollment at the site.

If the district qualifies for replacement facilities on the same site pursuant to either (1) or (2) above, the district is eligible for funding as a new construction project. Replacement facilities shall be allowed in accordance with the square footage amounts provided in the chart in Section (b) below. If the facility eligible for replacement is not shown in the chart in Section (b) below, the replacement facility shall be limited to the square footage replaced. The grant amount provided shall be $173.30 per square foot for Toilet Facilities and $96.30 per square foot for all other facilities. Additional funding may be provided for applicable site development costs pursuant to Section 1859.76, New Construction Excessive Cost Hardship Grant(s) pursuant to Section 1859.83(a), (b) or (d), therapy room pursuant to Section 1859.72, multilevel construction pursuant to Section 1859.73 and project assistance pursuant to Section 1859.73.1. The amounts shown will be adjusted in the manner prescribed in Section 1859.71. The district may be eligible for the funding provided to initiate and enforce a LCP as prescribed in Section 1859.71.4.

Any grants provided pursuant to either (1) or (2) above will be reduced for any space deemed available by the Board in the district, the HSAA or Super HSAA that could be used to house some or all of the displaced pupils, fifty percent of any insurance proceeds collectable by the district for the displaced facilities and fifty percent of the net proceeds available from the disposition of any displaced facilities.

(b) A multi–purpose room, toilet, gymnasium, school administration or library/media center, facility that meets all the following:

(1) The facility was lost or destroyed as a result of a disaster, including but not limited to fire, flood or earthquake.

(2) The facility is no longer useable for school purposes as recommended by the California Department of Education and approved by the Board.

(3) The district has demonstrated satisfactorily to the Board that the facility was uninsurable or the cost of insurance was prohibitive.

If the district qualifies, the district is eligible for funding as a new construction project. The funding amount provided shall be $96.30 per square foot for library/media center, school administration, gymnasium and multi–purpose facilities, and/or $173.30 per square foot for Toilet Facilities. A New Construction Additional Grant may be provided for applicable site development costs pursuant to Section 1859.76, New Construction Excessive Cost Hardship Grant(s) pursuant to Section 1859.83(a) and (d), therapy room pursuant to Section 1859.72, multilevel construction pursuant to Section 1859.73 and project assistance pursuant to Section 1859.73.1. The amounts shown will be adjusted in the manner prescribed in Section 1859.71. The district may be eligible for the funding provided to initiate and enforce a LCP as prescribed in Section 1859.71.4.

Any grants provided pursuant to (b) above, shall be reduced by fifty percent of any insurance proceeds collectable by the district for the displaced facilities and fifty percent of the net proceeds available from the disposition of any displaced facilities.

The square footage provided, after accounting for all useable facilities on the site, shall not exceed the following:

Facility	*Elementary School Pupils*	*Middle School Pupils*	*High School Pupils*
Multi–Purpose (includes food service)	5.3 sq. ft. per pupil minimum 4,000 sq. ft.	5.3 sq. ft. per pupil minimum 5,000 sq. ft.	6.3 sq. ft. per pupil minimum 8,200 sq. ft.
Toilet	3 sq. ft. per pupil minimum 300 sq. ft.	4 sq. ft. per pupil minimum 300 sq. ft.	5 sq. ft. per pupil minimum 300 sq. ft.
Gymnasium (includes shower/locker)	N/A	12.9 sq. ft. per pupil minimum 6,828 sq. ft. maximum 16,000 sq. ft.	15.3 sq. ft. per pupil minimum 8,380 sq. ft. maximum 18,000 sq. ft.
School Administration	3 sq. ft. per pupil minimum 600 sq. ft.	3 sq. ft. per pupil minimum 600 sq. ft.	4 sq. ft. per pupil minimum 800 sq. ft.
Library/Media Center	2.3 sq. ft. per pupil + plus 600 sq. ft.	3.3 sq. ft. per pupil + plus 600 sq. ft.	4.3 sq. ft. per pupil + plus 600 sq. ft.

Any facilities eligible for facility hardship not shown in the above chart or for Alternative Education facilities not shown in the table in Section 1859.77.3(a)(5) shall be eligible for replacement square footage equal to the facilities replaced. For an Alternative Education school eligible for a facility hardship, utilize the square footage provided in Section 1859.77.3(a)(5), with the exception of toilet and administration where the chart above shall be utilized.

A district may request a determination of eligibility for facility hardship funding in advance of project funding.

(c) A district seeking replaced facilities as a result of either (a) or (b) above must submit Form SAB 50–04 for the replaced facilities:

(1) Within 18 months if the replacement facilities will be located on the same site.

(2) Within 24 months if the replacement facilities will be located on a replacement site.

If an Approved Application for the replaced facility is not accepted within the time periods identified in (c)(1) or (c)(2) above, the Board shall re–review the criteria submitted by the district for replacement of the facility prior to apportionment of the replaced facility.

NOTE: Authority cited: Sections 17070.35 and 17075.15, Education Code. Reference: Sections 17074.56, 17075.10, 17075.15 and 101012(a)(1), Education Code.

HISTORY

1. New section filed 12–3–98 as an emergency; operative 12–3–98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4–2–99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3–31–99 as an emergency; operative 3–31–99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7–29–99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7–29–99 as an emergency; operative 7–29–99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11–26–99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7–29–99 order, including amendment of section, transmitted to OAL 8–26–99 and filed 10–8–99 (Register 99, No. 41).
5. Amendment of subsection (a)(2) and new subsections (c)–(c)(2) filed 6–26–2000; operative 6–26–2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
6. Amendment of subsection (c) and last paragraph filed 7–17–2000 as an emergency; operative 7–17–2000 (Register 2000, No. 29). A Certificate of Com-

pliance must be transmitted to OAL by 11–14–2000 or emergency language will be repealed by operation of law on the following day.

7. Certificate of Compliance as to 7–17–2000 order transmitted to OAL 11–9–2000 and filed 12–27–2000 (Register 2000, No. 52).

8. Amendment of subsections (a)(2), (b)(3), (c) and (c)(2) filed 1–2–2001 as an emergency; operative 1–2–2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5–2–2001 or emergency language will be repealed by operation of law on the following day.

9. Certificate of Compliance as to 1–2–2001 order transmitted to OAL 5–1–2001 and filed 6–13–2001 (Register 2001, No. 24).

10. Amendment of subsection (c) filed 7–25–2001; operative 7–25–2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).

11. Amendment of subsection (c) filed 8–13–2001; operative 8–13–2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).

12. Amendment of subsection (c) filed 4–10–2002; operative 4–10–2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).

13. Amendment of subsection (c) filed 5–2–2002; operative 6–1–2002 (Register 2002, No. 18).

14. Amendment of second paragraph following subsection (a)(2), first paragraph following subsection (b)(3), subsection (c) and NOTE filed 8–12–2002 as an emergency; operative 8–12–2002 (Register 2002, No. 33). A Certificate of Compliance must be transmitted to OAL by 12–10–2002 or emergency language will be repealed by operation of law on the following day.

15. Amendment of section heading and section filed 11–4–2002 as an emergency; operative 11–4–2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11–4–2003 or emergency language will be repealed by operation of law on the following day.

16. Certificate of Compliance as to 8–12–2002 order, including amendment of table within subsection (b)(3), transmitted to OAL 12–3–2002 and filed 1–16–2003 (Register 2003, No. 3).

17. Amendment of subsections (a)(2) and (b)(3) filed 8–25–2003 as an emergency; operative 8–25–2003 (Register 2003, No. 35). A Certificate of Compliance must be transmitted to OAL by 12–23–2003 or emergency language will be repealed by operation of law on the following day.

18. Certificate of Compliance as to 11–4–2002 order transmitted to OAL 11–4–2003 and filed 12–19–2003 (Register 2003, No. 51).

19. Reinstatement of section as it existed prior to 8–25–2003 emergency amendment by operation of Government Code section 11346.1(f) (Register 2004, No. 9).

20. Amendment of subsections (a)(2) and (b)(3) filed 12–20–2004 as an emergency; operative 12–20–2004 (Register 2004, No. 52). A Certificate of Compliance must be transmitted to OAL by 4–19–2005 or emergency language will be repealed by operation of law on the following day.

21. Amendment subsection (b)(3) filed 1–31–2005; operative 1–31–2005 pursuant to Government Code section 11343.4 (Register 2005, No. 5).

22. Certificate of Compliance as to 12–20–2004 order transmitted to OAL 4–19–2005 and filed 5–12–2005 (Register 2005, No. 19).

23. Amendment of subsection (a)(1), new subsections (a)(1)(A) and (a)(1)(B) and amendment of NOTE filed 4–30–2008; operative 4–30–2008 pursuant to Government Code section 11343.4 (Register 2008, No. 18).

§ 1859.83. Excessive Cost Hardship Grant.

In addition to any other funding authorized by these Regulations, a district is eligible for funding as a result of unusual circumstances that created excessive project costs beyond the control of the district. The Excessive Cost Hardship Grant shall be based on any of the following:

(a) Excessive Cost due to Geographic Location.

A district with a project that is located in a geographic area designated in the Geographic Percentage Chart below is eligible for the sum of the Excessive Cost Hardship Grant(s) determined by multiplying the indicated percentage factor shown in the Geographic Percentage Chart below by each of the following amounts:

(1) The New Construction Grant and the Modernization Grant.

(2) The funding provided by Sections 1859.71.2, 1859.71.3, 1859.72, 1859.73, 1859.73.2, 1859.76(d)(1) and (2), 1859.78.4, 1859.78.5, 1859.82(a) and (b), 1859.83(b), (c), (d) and (f) and 1859.125(a)(1) through (a)(2).

GEOGRAPHIC PERCENTAGE CHART

County	*% Factor*	*Description*
Alpine	5	The entire county.
Amador, Eastern Part	5	All of Amador County except the portion lying west of a line drawn five miles east of, and paralleling State Highway 49.
Butte, Eastern Part	5	All of Butte County except that portion lying west of a line drawn ten miles east of, and paralleling State Highway 99.
Calaveras, Eastern Part	5	All of Calaveras County except that portion lying west of State Highway 49.
Del Norte	5	The entire county.
El Dorado Eastern Part	15	That portion lying east of a north–south line drawn 25 miles west of the Nevada State Line and north to the county line and south to State Highway 88.
El Dorado	5	El Dorado County except the eastern part and the following areas: • West of a line drawn six miles east of and paralleling State Highway 49. • Within five miles of either side of U.S. highway 50 from the western county line to a point on the eastern limit of the community of Pollock Pines. • West of a line drawn three miles easterly from and paralleling a certain county road described as the Pleasant Valley Road which connects the community of Aukum with Diamond Springs and with the city of Plymouth.
Fresno, Eastern Part	5	All of Fresno County lying east of a line drawn ten miles east of, and paralleling the west boundary of the Sierra National Forest.
Glenn, Western Part	5	All of Glenn County except that portion lying east of a line drawn ten miles west of, and paralleling Interstate Highway 5.
Humboldt, Redwood Highway	5	That portion of Humboldt County situated within five miles of the Redwood Highway (U.S. 101) except for that portion situated within ten miles of the Redwood Highway from the northern boundary of the community of Trinidad to the southern boundary of the community of Rio Dell.
Humboldt, State Highway 299 and Vicinity	5	That portion of Humboldt County situated within five miles of State Highway 299 and State route 96, except for those portions situated within ten miles of the Redwood Highway (U.S. 101) from the northern boundary of the community of Trinidad to the southern boundary of the community of Rio Dell.
Humboldt, Southeastern Part	15	That portion of Humboldt county adjacent to or east of, the road between Harris to Blocksburg to a point ten miles north of Blocksburg.
Humboldt, Residual Area	10	All areas of Humboldt County not classified in other cost groups except for that portion situated within ten miles of the Redwood Highway from the northern boundary of the community of Trinidad to the southern boundary of the community of Rio Dell.
Imperial	5	The entire county.
Inyo, Southeastern Part	20	That portion of Inyo County situated east of the western boundary of the Death Valley National Monument from the northern boundary of said national monument to the southern boundary of the county.
Inyo, Residual Area	5	All of Inyo County except the southeastern part described above.
Kern, Eastern Part	5	That portion of Kern County lying east of a north–south line drawn through the eastern boundary of the town of Tehachapi.
Lake	5	The entire county.
Lassen, Southern Part	10	That portion of Lassen County lying south of an east–west line drawn through a point ten miles north of Susanville.
Lassen, Northern Part	15	All of Lassen County except the southern part described above.
Los Angeles, Santa Catalina Island only	*	The entire Santa Catalina Island.
Madera, Central Part	5	That portion of Madera County lying between a line drawn ten miles west of, and paralleling the western boundary of the Sierra National Forest and a line drawn ten miles east of and paralleling the western boundary of the Sierra National Forest.
Madera, Eastern Part	5	All of Madera County except the western part and the central part described above.
Mariposa, Eastern Part	5	All of Mariposa County except that portion lying west of: • A line drawn five miles east of, and paralleling State Highway 49 from the northern county line to Mormon's Bar; and • A line drawn ten miles west of, and paralleling the western boundary of the Sierra National Forest from a point due east of Mormon's Bar to the southern county line.
Mendocino, Fort Bragg Area	10	Those portions of Mendocino County lying west of the Southern Redwood Highway Area, and south of the Ten Mile River.

County	*% Factor*	*Description*
Mendocino, Northern Redwood Highway Area	5	That portion of Mendocino County situated within five airline miles of the Redwood Highway (U.S. 101) from a point ten miles north of the Willits City Hall to the northern boundary of the county.
Mendocino, Residual Area	10	Those portions of Mendocino County not otherwise classified except that portion situated within ten airline miles of the Redwood Highway (U.S. 101) from a point ten miles north of the Willits City Hall to the southern boundary of the county. (Comprises the Northeastern part of the county and the coastal strip in the northwestern part).
Modoc	15	The entire county.
Mono	20	The entire county.
Monterey, Southern Part	5	All Monterey County except that portion lying north of an east–west line beginning on the coast two miles south of the City of Carmel and extending due east to the eastern boundary of the county.
Nevada	5	That portion of Nevada County not included in the Eastern Part.
Nevada, Eastern Part	15	That portion lying east of a north–south line drawn 25 miles west of the Nevada State Line and north to the county line and south to the county line.
Placer, Eastern Part	15	That portion lying east of a north–south line drawn 25 miles west of the Nevada State Line and north to the county line and south to the county line.
Placer, Northeastern Part	5	All of Placer County except the Eastern Part and the following: • Within five miles of either side of State Highway 65 from the southern boundary of the county and the northern limit of the community of Lincoln. • Five miles either side of Interstate 80 from the southern boundary of the county and the northern limit of the community of Penryn. • West of a line drawn five miles east of, and paralleling State Highway 49. • Within five miles of either side of Interstate 80 between the northern limit of the community of Penryn and the northern limit of the community of Colfax.
Plumas	5	The entire county.
Riverside, Eastern Part	20	That portion lying east of a north–south line drawn 50 miles west of the Arizona State Line and north to the county line and south to the county line.
Riverside, Central Part	5	That portion of Riverside County lying east of a north–south line drawn through the intersection of Interstate 10 and Fields Road extending from the southern county line of Riverside County, north to the southern county line of San Bernardino County to the Eastern Part of the County.
San Benito, Southern Part	5	All of San Benito County except that portion lying north of an east–west line drawn across the county from a point two miles south of the community of Paicines.
San Bernardino, Northeastern Part	5	That portion of San Bernardino County lying north and east of an east–west line drawn two miles north of Oro Grande, extending from the western boundary of the county to its intersection with the northerly extension of, and thence along a line drawn through the following points: A point five miles east of Victorville, the eastern edge of the communities of Running Springs and Camp Angelus then due south to the San Bernardino County line.
San Bernardino, Eastern Part	20	That portion lying east of a north–south line drawn 150 miles west of the Arizona State Line and north to the county line and south to the county line.
San Diego, Northeastern Part	10	That portion of San Diego County lying east of a north–south line drawn ten miles east of the community of Julian, said line extending from the northern boundary of the county to its intersection with an east–west line extending from the eastern boundary of the county to its intersection with the aforesaid north–south line, said east–west line being at its closest point, three miles due north of the community of Mount Laguna.
San Mateo, Southwestern Part	5	That portion of San Mateo County lying more than two miles westerly from the nearest point on Skyline Boulevard and south of an east–west line drawn through a point two miles north of the community of Montara.
Santa Cruz, Northwestern Part	5	That portion of the Santa Cruz County lying northerly and westerly from a line drawn from a point one mile north of Swanton on the coast through a point one mile north of Brookdale and situated more than two miles from the nearest point on the eastern boundary of the county.
Shasta, except Valley Area	5	All of Shasta County except that portion lying south of Shasta Lake and situated within ten miles of Interstate Highway 5.
Sierra	5	The entire county.
Siskiyou, Central Part	15	That portion of Siskiyou County situated within ten miles of U.S. Highway 97 from Grass Lake to the Oregon State Line.
Siskiyou, Salmon River	25	All of the drainage area of the Salmon River (including the North and South Forks) except that portion situated within the Somes Bar Area described below.

County	*% Factor*	*Description*
Siskiyou, Somes Bar Area	20	Those portions of the drainage areas of the Salmon and Klamath Rivers located within the boundaries of the Junction Elementary School District.
Siskiyou, Western Part	15	That portion of Siskiyou County lying westerly from a line drawn ten miles west of and parallel to Interstate 5, except the Somes Bar and Salmon River areas described above.
Siskiyou, Yreka and Residual Area	5	All of Siskiyou County except the Salmon River, Somes Bar and Western areas described above.
Sonoma, Northwestern Part	5	That portion of Sonoma County enclosed by a line following the northern boundary of the county from the Pacific Ocean to a point 15 miles inland, thence southerly to a point two miles west of the community of Los Lomas, thence southerly to a point on the coast two miles south of the community of Fort Ross, thence northerly along the coast line to the northern boundary of the county.
Tehama, Residual Area	5	All of Tehama County except those portions situated within ten miles west of Interstate Highway 5 from the north county line to the southern county line; within ten miles east of Interstate Highway 5 from the north county line southward to a point east of Red Bluff, thence within ten miles east of and paralleling State Highway 99 southward to the county line.
Trinity, Residual Area	15	All of Trinity County except the State Highway 299 area described below.
Trinity, State Highway 299	10	That portion of Trinity County situated within five miles of State Highway 299.
Tulare, Eastern Part	5	That portion of Tulare County lying east of a north–south line drawn through the western limits of the community of Silver City.
Tuolumne, Eastern Part	5	All of Tuolumne County except that portion lying west of State Highway 49.
Yuba, Northeastern Part	5	All of Yuba County except that portion lying west of a line drawn ten miles east of, and paralleling State Highway 65 and that portion lying south of a line drawn three miles north of, and paralleling State Highway 20.

*As specifically approved by the Board.

(b) Excessive Cost for Projects that House No More than 200 Pupils (Small Size Projects).

(1) Excluding Joint–Use Projects, if the project will house less than 101 pupils, the district is eligible for an Excessive Cost Hardship Grant equal to 12 percent of the funding provided by the New Construction Grant or 12 percent of the funding provided by the Modernization Grant.

(2) Excluding Joint–Use Projects, if the project will house between 101 and 200 pupils, the district is eligible for an Excessive Cost Hardship Grant equal to four percent of the funding provided by the New Construction Grant or four percent of the funding provided by the Modernization Grant.

(3) A Type I Joint–Use Project and a Type II, part of a qualifying SFP Modernization project, Joint–Use Project is eligible for an Excessive Cost Hardship Grant equal to:

(A) 12 percent of the funding provided by Section 1859.125(a)(1) through (a)(2), if the qualifying SFP New Construction or Modernization project pursuant to Section 1859.123 or 1859.123.1 will house less than 101 pupils.

(B) Four percent of the funding provided by Section 1859.125(a)(1) through (a)(2), if the qualifying SFP New Construction or Modernization project pursuant to Section 1859.123 or 1859.123.1 will house between 101 and 200 pupils.

(4) A Type II Joint–Use Project, not part of a qualifying SFP Modernization project, is eligible for an Excessive Cost Hardship Grant equal to eight percent of the funding provided by Section 1859.125(a)(1) through (a)(2).

(c) Excessive Cost to Construct a New School Project.

(1) With the exception of Alternative Education schools for which the final plans and specifications for the project were accepted by the DSA on or after March 24, 2004, or Small High School Program new construction projects, if the project is for a new elementary, middle or high school on a site with no existing school facilities the district is eligible for a New Construction Excessive Cost Hardship Grant equal to the difference in the amount provided by the New Construction Grant and the amount shown below, based on the number of classrooms, including classrooms used for Individuals with Exceptional Needs, in the project:

Classrooms in project	*Elementary School*	*Middle School*	*High School*
1	$160,000	$674,000	$1,466,000
2	$377,000	$756,000	$1,525,000
3	$566,000	$840,000	$1,885,000
4	$717,000	$932,000	$2,205,000
5	$842,000	$1,028,000	$2,428,000
6	$1,021,000	$1,125,000	$2,651,000
7	$1,202,000	$1,222,000	$2,874,000
8	$1,341,000	$1,328,000	$3,046,000
9	$1,341,000	$1,440,000	$3,184,000
10	$1,577,000	$1,553,000	$3,321,000
11	$1,577,000	$1,666,000	$3,459,000
12	$1,660,000		$3,585,000
13			$3,709,000
14			$3,833,000
15			$3,958,000
16			$4,082,000
17			$4,207,000
18			$4,331,000
19			$4,455,000
20			$4,580,000
21			$4,704,000
22			$4,828,000

The amounts shown above will be adjusted annually in the manner prescribed in Section 1859.71.

Any Excessive Cost Hardship Grant provided under this subsection for a new school project shall be offset against future New Construction Grant funds provided for that same school. The amount of the offset shall be determined by dividing the additional New Construction Grant pupil request by the difference in the New Construction Grant pupil request when the initial Excessive Cost Hardship Grant was made and 325 for an elementary school, 324 for a middle school, and 621 for a high school project and multiplying the quotient by the Excessive Cost Hardship Grant funds provided under this subsection for that project.

(2) Excessive Cost Hardship Grants for Alternative Education schools for which the plans and specifications for the project were accepted by the DSA on or after March 24, 2004, or for any Alternative Education schools for which the plans and specifications for the project were accepted by the DSA prior to March 24, 2004 and in lieu of choosing funding under Section 1859.82(c)(1), may request funding as follows:

(A) If the project is for an Alternative Education school on a site with no existing school facilities, the district is eligible for a New Construction

Excessive Cost Hardship Grant equal to the difference in the amount provided by the New Construction Grant and the amount shown below, based on the number of classrooms in the project:

Classrooms	*Alternative Education New School Allowance*
1	$ 434,700
2	$ 527,400
3	$ 921,960
4	$ 1,037,250
5	$ 1,152,540
6	$ 1,267,830
7	$ 1,383,120
8	$ 1,504,170
9	$ 1,629,180
10	$ 1,754,190
11	$ 2,239,290
12	$ 2,364,300
13	$ 2,489,310
14	$ 2,614,320
15	$ 2,739,330
16	$ 2,864,340
17	$ 2,989,350
18	$ 3,114,360
19	$ 3,239,370
20	$ 3,364,380
21	$ 3,489,480
22	$ 3,614,490
23	$ 3,739,500
24	$ 3,864,510
25	$ 3,989,520
26	$ 4,114,530
27	$ 4,239,540

The amounts shown will be adjusted annually in the manner prescribed in Section 1859.71.

(B) If the project is for additional classroom(s) to an existing Alternative Education school constructed under the provisions of 1859.83(c)(2), the district is eligible for a New Construction Excessive Cost Hardship Grant calculated as follows:

1. Determine the amount shown in the chart above in Section 1859.83(c)(2)(A) for the total combined number of classrooms in the current project and all previous projects at the same site. In the first funding request when the total number of classrooms exceeds 27, the amount shown for 27 classrooms shall be used.

2. Subtract the sum of the amount previously apportioned for the New Construction Grant and the funding provided pursuant to Section 1859.83(c)(2) for the sum of the number of classrooms for all previous projects at the same site (exclude the classrooms in the current project) from (B)1.

3. Subtract the New Construction Grant for the current project from the result in (B)2.

(3) If the project is for a Small High School on a site with no existing facilities, or for only one of the Small High Schools created pursuant to Section 1859.93.2(c)(4), the district is eligible for a New Construction Excessive Cost Hardship Grant equal to the difference in the amount provided in the New Construction Grant and the amount shown below, based on the number of classrooms in the project:

Classrooms	*Small High School*
1	$1,759,200
2	$1,830,000
3	$2,262,000
4	$2,646,000
5	$2,913,600
6	$3,181,200
7	$3,448,800
8	$3,655,200
9	$3,820,800
10	$3,985,200
11	$4,150,800
12	$4,302,000
13	$4,450,800
14	$4,599,600
15	$4,749,600
16	$4,898,400
17	$5,048,400
18	$5,197,200
19	$5,346,000
20	$5,496,000
21	$5,644,800
22	$5,793,600

The amounts shown will be adjusted annually in the manner prescribed in Section 1859.71.

The grant shall not exceed the number of classrooms necessary to house 500 pupils.

After the expiration of the time frame specified in Section 1859.93.2(e), any Excessive Cost Hardship Grant shall be offset against future New Construction Grant funds as provided in (c)(1) above.

(d) Excessive Cost Due to Urban Location, Security Requirements and Impacted Site.

(1) Excluding Joint–Use Projects, the district is eligible for an Excessive Cost Hardship Grant if the district had a project that was previously approved by the DSA, and prior to January 22, 2003, has received SAB approval for a time extension for substantial progress, and if the useable site acreage for the project is:

(A) at least 50 percent but less than 75 percent of the site size recommended by the CDE for the master planned project capacity. The New Construction Excessive Cost Hardship Grant is equal to eight percent of the New Construction Grant and eight percent of the funding authorized by Sections 1859.73.2 and 1859.83(b) and (c).

(B) at least 30 percent but less than 50 percent of the site size recommended by the CDE for the master planned project capacity. The New Construction Excessive Cost Hardship Grant is equal to 15 percent of the New Construction Grant and 15 percent of the funding authorized by Sections 1859.73.2 and 1859.83(b) and (c).

(C) less than 30 percent of the site size recommended by the CDE for the master planned project capacity. The New Construction Excessive Cost Hardship Grant is equal to 50 percent of the New Construction Grant and 50 percent of the funding authorized by Sections 1859.73.2 and 1859.83(b) and (c).

(D) less than 30 percent of the site size recommended by the CDE for the master planned project capacity.

(2) Excluding Joint–Use Projects, the district is eligible for an Excessive Cost Hardship Grant if all of the following conditions are met, as applicable:

(A) the Useable Acres of the site for the project are 60 percent or less of the CDE recommended site size based on:

1. the current CBEDS Report at the existing site, if any, at the time of the CDE final plan approval for the project, if any, plus the greater of the Net School Building Capacity of the final new construction project plans submitted to the DSA as calculated in Education Code Section 17071.25(a)(2) or the pupil grants requested in the COS or Charter School project. The Useable Acres will include the existing site that is being utilized for this project plus any additional acreage to be acquired as a part of the Application.

2. the current CBEDS Report at the site at the time of the CDE final plan approval for the modernization project.

(B) at least 60 percent of the classrooms in the construction plans are in multistory facilities for any type of new construction project.

(C) the value of the site being acquired for a new construction project on a new site is at least $750,000 per Useable Acre.

(3) If the criteria in (d)(2) are met, the Excessive Cost Hardship Grant:

(A) for new construction is equal to 15 percent of the New Construction Grant and 15 percent of the funding authorized by Sections 1859.73.2 and 1859.83(b) and (c) for a project with a site that is 60 percent of the CDE recommended site size plus 1.166 percent for each percentage decrease in the CDE recommended site size below 60 percent. In no event shall the amount provided in this subsection for a new construction project on a new site exceed 50 percent of the cost avoided with the purchase of a site smaller than the CDE recommended site size for the number of the pupil grants requested in the Application determined as follows:

1. The current estimated value of the project site as determined in Section 1859.74.6(a)(1).

2. Divide the amount in (A)1. by the number of Useable Acres.

3. Multiply the quotient in (A)2. by the number of Useable Acres recommended by CDE for the number of pupils described in Section 1859.83(d)(2)(A)1.

4. Subtract the value in (A)1. from the product in (A)3.

5. Multiply the difference in (A)4. above by 50 percent.

(B) for modernization is equal to 15 percent of the Modernization Grant and 15 percent of the funding authorized by Section 1859.83(b) for a project with a site that is 60 percent of the CDE recommended site size plus 0.333 percent for each percentage decrease of the CDE recommended site size below 60 percent.

(4) For Joint–Use Projects, the district is eligible for an Excessive Cost Hardship Grant if:

(A) the Type I Joint–Use Project's qualifying SFP New Construction project pursuant to Section 1859.123 qualifies for an Excessive Cost Hardship Grant under Section 1859.83(d)(2) and (3)(A).

(B) The Type II Joint–Use Project's qualifying SFP Modernization project pursuant to Section 1859.123.1 qualifies for an Excessive Cost Hardship Grant under Section 1859.83(d)(2) and (3)(B).

(C) the Useable Acres at the existing school site where the Type II Joint–Use Project, not part of a qualifying SFP Modernization project, is to be constructed are 60 percent or less of the CDE recommended site size based on the existing enrollment at this site.

(5) If the criteria in (d)(4)(A) or (C) are met, the Joint–Use Project Excessive Cost Hardship Grant is equal to 15 percent of the funding provided by Section 1859.125(a)(1) through (a)(2), for a project with a site that is 60 percent of the CDE recommended site size plus 1.166 percent for each percentage decrease in the CDE recommended site size below 60 percent. For a Type I Joint–Use Project when the qualifying SFP New Construction project involves new construction on a new site, in no event shall the amount provided in this subsection exceed 50 percent of the cost avoided with the purchase of a site smaller than the CDE recommended site size for the qualifying SFP New Construction project pursuant to Section 1859.123 as calculated in Section 1859.83(d)(3)(A).

(6) If the criteria in (d)(4)(B) are met, the Joint–Use Project Excessive Cost Hardship Grant is equal to 15 percent of the funding provided by Section 1859.125(a)(1) through (a)(2), for a project with a site that is 60 percent of the CDE recommended site size plus 0.333 percent for each percentage decrease in the CDE recommended site size below 60 percent.

(e) Excessive Cost for rehabilitation of facilities the Board has determined are a health and safety risk to the pupils pursuant to Section 1859.82(a)(1) and the cost/benefit analysis to mitigate the problem and remain in the facility is less than 50 percent of the Current Replacement Cost of the facility. If the district qualifies, the district is eligible for funding of rehabilitation costs as a modernization project. If the Approved Application is received on or before April 29, 2002, the grant amount provided is 80 percent of the amount of the cost estimate required in Section 1859.82(a)(1) that has been reviewed by the OPSC and approved by the Board. If the Approved Application is received after April 29, 2002, the grant amount provided is 60 percent of the amount of the cost estimate required in Section 1859.82(a)(1) that has been reviewed by the OPSC and approved by the Board. The district may be eligible for the funding provided to initiate and enforce a LCP as prescribed in Section 1859.71.4.

(f) Excessive cost due to accessibility and fire code requirements.

(1) The district is eligible for a Modernization Excessive Cost Hardship Grant equal to three percent of the Modernization Grant for accessibility and fire code requirements. In lieu of three percent, the district has the option of requesting 60 percent of the amount determined in (A), not to exceed 60 percent of the amount determined in (B):

(A) Determine the difference of the verified hard construction costs of the minimum accessibility and fire code work necessary to receive approval from the DSA minus seven percent of the sum of the Modernization Grant and the district matching share of the Modernization Grant pursuant to Section 1859.79.

(B) Determine the difference of 1. minus 2.:

1. Multiply the pupils requested in the application by the New Construction Grant.

2. The sum of the State and district share of the pupils requested on the Form SAB 50–04 multiplied by the grant determined pursuant to Section 1859.78 and 1859.78.3.

(2) Projects constructed pursuant to Section 1859.79.2(a)(1) may be provided a Modernization Excessive Cost Hardship Grant equal to three percent of the Modernization Grant.

(3) The district is eligible for a Modernization Excessive Cost Hardship Grant of:

(A) $80,000 for each new two–stop elevator required to be included in the project by the DSA if the Approved Application was received on or before April 29, 2002.

(B) $60,000 for each new two–stop elevator required to be included in the project by the DSA if the Approved Application was received after April 29, 2002.

The amounts shown in (A) and (B) above shall be adjusted annually in the manner prescribed in Section 1859.78.

(4) The district is eligible for a Modernization Excessive Cost Hardship Grant of:

(A) $14,400 for each additional stop of the new elevator required in (3) above if the Approved Application was received on or before April 29, 2002.

(B) $10,800 for each additional stop of the new elevator required in (3) above if the Approved Application was received after April 29, 2002.

The amounts shown in (A) and (B) above shall be adjusted annually in the manner prescribed in Section 1859.78.

NOTE: Authority cited: Sections 17070.35 and 17075.15, Education Code. Reference: Sections 17072.32, 17074.15, 17074.16, 17075.10, 17075.15, 17077.40, 17077.42 and 17077.45, Education Code.

HISTORY

1. New section filed 12–3–98 as an emergency; operative 12–3–98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4–2–99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3–31–99 as an emergency; operative 3–31–99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7–29–99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7–29–99 as an emergency; operative 7–29–99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11–26–99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7–29–99 order, including amendment of section, transmitted to OAL 8–26–99 and filed 10–8–99 (Register 99, No. 41).
5. Amendment of first paragraph filed 1–2–2001 as an emergency; operative 1–2–2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5–2–2001 or emergency language will be repealed by operation of law on the following day.
6. Amendment adding second paragraph following the table in subsection (c) filed 4–5–2001; operative 4–5–2001 pursuant to Government Code section 11343.4 (Register 2001, No. 14).
7. Certificate of Compliance as to 1–2–2001 order transmitted to OAL 5–1–2001 and filed 6–13–2001 (Register 2001, No. 24).
8. Amendment of section and NOTE filed 9–16–2002 as an emergency; operative 9–16–2002 (Register 2002, No. 38). A Certificate of Compliance must be transmitted to OAL by 1–14–2003 or emergency language will be repealed by operation of law on the following day.
9. Amendment of section and NOTE filed 11–4–2002 as an emergency; operative 11–4–2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11–4–2003 or emergency language will be repealed by operation of law on the following day.
10. Editorial correction amending subsection (c) (Register 2003, No. 8).
11. Certificate of Compliance as to 9–16–2002 order transmitted to OAL 1–7–2003 and filed 2–19–2003 (Register 2003, No. 8).
12. Amendment filed 2–27–2003 as an emergency; operative 2–27–2003 (Register 2003, No. 9). A Certificate of Compliance must be transmitted to OAL by 6–27–2003 or emergency language will be repealed by operation of law on the following day.

13. Amendment refiled 6–19–2003 as an emergency; operative 6–19–2003 (Register 2003, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–17–2003 or emergency language will be repealed by operation of law on the following day.
14. Amendment of subsection (e) filed 8–25–2003 as an emergency; operative 8–25–2003 (Register 2003, No. 35). A Certificate of Compliance must be transmitted to OAL by 12–23–2003 or emergency language will be repealed by operation of law on the following day.
15. Amendment of section and NOTE refiled 10–10–2003 as an emergency; operative 10–10–2003 (Register 2003, No. 41). A Certificate of Compliance must be transmitted to OAL by 2–9–2004 or emergency language will be repealed by operation of law on the following day.
16. Certificate of Compliance as to 11–4–2002 order transmitted to OAL 11–4–2003 and filed 12–19–2003 (Register 2003, No. 51).
17. Reinstatement of section as it existed prior to 8–25–2003 emergency amendment by operation of Government Code section 11346.1(f) (Register 2004, No. 9).
18. Certificate of Compliance as to 10–10–2003 order transmitted to OAL 2–9–2004 and filed 3–23–2004 (Register 2004, No. 13).
19. Amendment of subsections (b)(3)–(4) and (d)(4)(A), new subsection (d)(4)(B), subsection relettering, amendment of newly designated subsection (d)(4)(C) and subsection (d)(5) and new subsection (d)(6) filed 5–21–2004 as an emergency; operative 5–21–2004 (Register 2004, No. 21). A Certificate of Compliance must be transmitted to OAL by 9–20–2004 or emergency language will be repealed by operation of law on the following day.
20. Certificate of Compliance as to 5–21–2004 order transmitted to OAL 9–20–2004 and filed 11–2–2004 (Register 2004, No. 45).
21. Amendment of subsection (e) filed 12–20–2004 as an emergency; operative 12–20–2004 (Register 2004, No. 52). A Certificate of Compliance must be transmitted to OAL by 4–19–2005 or emergency language will be repealed by operation of law on the following day.
22. Amendment revising and redesignating second paragraph of subsection (c) as new subsection (c)(1) and adopting new subsections (c)(2)–(c)(2)(B)3. filed 1–31–2005; operative 1–31–2005 pursuant to Government Code section 11343.4 (Register 2005, No. 5).
23. Certificate of Compliance as to 12–20–2004 order transmitted to OAL 4–19–2005 and filed 5–12–2005 (Register 2005, No. 19).
24. Amendment of subsection (c)(1), new subsection (c)(3) and amendment of NOTE filed 3–14–2006; operative 3–14–2006 pursuant to Government Code section 11343.4 (Register 2006, No. 11).
25. Amendment of subsection (a)(2) filed 9–5–2006 as an emergency; operative 9–5–2006 (Register 2006, No. 36). A Certificate of Compliance must be transmitted to OAL by 1–3–2007 or emergency language will be repealed by operation of law on the following day.
26. Certificate of Compliance as to 9–5–2006 order transmitted to OAL 1–3–2007 and filed 2–16–2007 (Register 2007, No. 7).
27. Amendment of subsections (f) and (f)(1), new subsections (f)(1)(A)–(f)(2), subsection renumbering and amendment of newly designated subsections (f)(4)(A)–(B) filed 4–25–2007; operative 4–25–2007 pursuant to Government Code section 11343.4 (Register 2007, No. 17).
28. Amendment of subsection (c)(3) filed 5–17–2007; operative 5–17–2007 pursuant to Government Code section 11343.4 (Register 2007, No. 20).
29. Amendment of subsections (a)(2), (b)(3)(A)–(b)(4) and (d)(5)–(d)(6) filed 3–3–2008 as an emergency; operative 3–3–2008 (Register 2008, No. 10). A Certificate of Compliance must be transmitted to OAL by 9–2–2008 or emergency language will be repealed by operation of law on the following day.
30. Amendment of subsection (f)(1)(A) filed 4–30–2008; operative 4–30–2008 pursuant to Government Code section 11343.4 (Register 2008, No. 18).
31. Certificate of Compliance as to 3–3–2008 order, including amendment of subsection (d)(1), transmitted to OAL 6–9–2008 and filed 7–10–2008 (Register 2008, No. 28).

Article 10. Fund Release and Priority Points

§ 1859.90. Fund Release Process.

With the exception of an apportionment made pursuant to Sections 1859.81.1(e) or 1859.81.2, the OPSC will release State funds that have been apportioned by the Board to the district after submittal, by the district, of the Form SAB 50–05. With the exception of an apportionment made for a Type II Joint–Use Project, not part of a qualifying SFP Modernization project, pursuant to Article 12 of these Regulations, a district must submit the Form SAB 50–05, within 18 months of the Apportionment of the SFP grant for the project or the entire New Construction Adjusted Grant, Modernization Adjusted Grant or Type I or II, part of a qualifying SFP Modernization project, Joint–Use Project apportionment shall be rescinded without further Board action, and the pupils housed in the project, if applicable, will be added back to the district's baseline eligibility. The district may refile a new application for the project subject to district eligibility and priority funding at the time of resubmittal.

If the apportionment was made for a Type II Joint–Use Project, not part of a qualifying SFP Modernization project, pursuant to Article 12 of these Regulations, the district must submit Form SAB 50–05 within 18 months of the date the plans and specifications for the Joint–Use Project that have been approved by the DSA and the CDE are submitted to the OPSC or the apportionment shall be rescinded without further Board action.

The OPSC will release State funds that have been apportioned by the Board pursuant to Section 1859.81.1(e) to the district within 30 calendar days of the apportionment.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17072.12, 17072.30, 17074.15, 17076.10, 17077.40, 17077.42 and 17077.45, Education Code.

HISTORY

1. New article 10 (sections 1859.90–1859.95) and section filed 12–3–98 as an emergency; operative 12–3–98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4–2–99 or emergency language will be repealed by operation of law on the following day.
2. New article 10 (sections 1859.90–1859.95) and section refiled 3–31–99 as an emergency; operative 3–31–99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7–29–99 or emergency language will be repealed by operation of law on the following day.
3. New article 10 (sections 1859.90–1859.95) and section refiled 7–29–99 as an emergency; operative 7–29–99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11–26–99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7–29–99 order, including amendment of section, transmitted to OAL 8–26–99 and filed 10–8–99 (Register 99, No. 41).
5. Amendment filed 6–26–2000; operative 6–26–2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
6. Amendment of first paragraph filed 7–17–2000 as an emergency; operative 7–17–2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11–14–2000 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 7–17–2000 order transmitted to OAL 11–9–2000 and filed 12–27–2000 (Register 2000, No. 52).
8. Amendment of first paragraph filed 1–2–2001 as an emergency; operative 1–2–2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5–2–2001 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 1–2–2001 order transmitted to OAL 5–1–2001 and filed 6–13–2001 (Register 2001, No. 24).
10. Amendment of section and NOTE filed 11–4–2002 as an emergency; operative 11–4–2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11–4–2003 or emergency language will be repealed by operation of law on the following day.
11. Amendment of first paragraph and amendment of NOTE filed 2–6–2003; operative 2–6–2003 pursuant to Government Code section 11343.4 (Register 2003, No. 6).
12. Certificate of Compliance as to 11–4–2002 order, including amendment of first and last paragraph, transmitted to OAL 11–4–2003 and filed 12–19–2003 (Register 2003, No. 51).
13. Amendment of first and second paragraphs filed 5–21–2004 as an emergency; operative 5–21–2004 (Register 2004, No. 21). A Certificate of Compliance must be transmitted to OAL by 9–20–2004 or emergency language will be repealed by operation of law on the following day.
14. Certificate of Compliance as to 5–21–2004 order transmitted to OAL 9–20–2004 and filed 11–2–2004 (Register 2004, No. 45).

§ 1859.90.1. Local Bond Reimbursement Fund Releases.

When a school district uses local bond funds to make eligible project expenditures authorized in the Leroy F. Greene Act and state school bond funds are made available to reimburse the state's share of those eligible project expenditures, the reimbursement funds shall be used as follows:

(a) Toward retiring the local bonds; and/or

(b) Toward uses permitted by the local bond, or

(c) For any high priority capital outlay expenditure in the district as permitted in Education Code Section 17070.63(c).

The use of the reimbursement funds in accordance with this section shall be subject to oversight by the applicable county office of education pursuant to Education Code Section 1240.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.63 and 17072.35, Education Code.

HISTORY

1. New section filed 2–23–2005; operative 2–23–2005 pursuant to Government Code section 11343.4 (Register 2005, No. 8).

§ 1859.91. *Implementation of Priority Points Due to Insufficient State Funds.*

This Regulation shall only apply to Approved Applications for New Construction Grants funded with the proceeds of state bonds approved by the voters prior to January 1, 2002.

(a) The OPSC shall report to the Board on a monthly basis the amount of funds available for New Construction Grants and Modernization Grants and the estimated amount of Approved Applications for New Construction Grants and Modernization Grants not yet apportioned. The Board shall implement a priority point mechanism described in (b) for New Construction Grants requests when either of the following occur:

(1) The amount of Approved Applications for New Construction Grants and Modernization Grants not yet apportioned exceed the funds available for New Construction Grants and Modernization Grants.

(2) The funds available for New Construction Grants are $300 million or less.

(b) Once either (1) or (2) in (a) occurs, the Board shall approve and apportion the funds available for New Construction Grants requests based on the following priority point mechanism:

(1) From the funds available for New Construction Grants, the Board shall establish a final allotment equal to the lesser of $450 million or the balance of the funds available for New Construction Grants, to be apportioned in accordance with (2) below. After deducting the final allotment, the Board shall divide the remaining funds into seven equal allotments, to be apportioned on a quarterly basis, commencing with the last quarter of calendar year 2000 and ending the second quarter of calendar year 2002. Quarterly apportionments are subject to the following:

(A) The Board shall apportion Approved Applications for New Construction Grants requests received prior to the beginning of the quarter that are Ready for Apportionment, all New Construction Grants requests that were included on an Unfunded List and New Construction Grants requests that meet the criteria of subsection (d), until the funds available for New Construction Grants for that quarter are exhausted. New Construction Grants requests eligible for an apportionment shall be apportioned in the following order:

1. To projects that meet the criteria of subsection (d) where the Approved Application date adjusted back in time would have qualified the project for an apportionment.

2. To projects exempt from priority points pursuant to Section 1859.92(e).

3. To projects having the greatest number of priority points.

(B) If two or more projects have the same number of priority points, those projects shall be first ranked according to the Approved Application date.

(C) No New Construction Grants request will be recommended for apportionment unless the project can be entirely apportioned from the funds available for that quarter.

(D) If the Approved Applications for New Construction Grants received prior to the quarter that are Ready for Apportionment, all New Construction Grants requests that were included on an Unfunded List prior to the quarter and New Construction Grants requests that meet the criteria of subsection (d) are less than the quarterly allotment, plus any funds remaining from the previous quarter(s), the excess funds shall be added to the next quarterly allotment.

(E) If the Approved Applications for New Construction Grants requests received prior to the quarter that are Ready for Apportionment, all New Construction Grants requests that were included on an Unfunded List prior to the quarter and New Construction Grants requests that meet the criteria of subsection (d) are greater than the quarterly allotment, plus any funds remaining from the previous quarter(s), any New Construction Grants requests not apportioned by the Board shall be placed on an Unfunded List.

(F) All New Construction Grants requests, as described in (A) above, that are Ready for Apportionment in a quarter shall not be apportioned before the last regularly scheduled Board meeting for that quarter with the exception of New Construction Grants requests that meet the criteria of subsection (b)(1)(A)(1) or (2). Any New Construction Grants request that is Ready for Apportionment in a quarter that meets the criteria of subsection (b)(1)(A)(1) or (2) may be apportioned at any of the regularly scheduled Board meetings during that quarter.

(2) The final allotment shall be apportioned subject to the following:

(A) The Board shall apportion Approved Applications for New Construction Grants received between April 1, 2002 and June 26, 2002 that are Ready for Apportionment, all New Construction Grants requests that were included on an Unfunded List and New Construction Grants requests that meet the criteria of subsection (e), until the final allotment, plus any funds remaining from the previous quarters are exhausted. New Construction Grants requests eligible for an apportionment shall be apportioned in the following order:

1. To projects that meet the criteria of subsection (e) where the Approved Application date adjusted back in time would have qualified the project for an apportionment.

2. To projects exempt from priority points pursuant to Section 1859.92(e).

3. To projects having the greatest number of priority points.

(B) If two or more projects have the same number of priority points, those projects shall be first ranked according to the Approved Application date.

(C) If the Approved Applications for New Construction Grants received between April 1, 2002 and June 26, 2002 that are Ready for Apportionment, all New Construction Grants requests that were included on an Unfunded List and New Construction Grants requests that meet the criteria of subsection (e) are greater than the final allotment, plus any remaining funds from the previous quarter(s), any New Construction Grants requests not apportioned by the Board shall be placed on an Unfunded List.

(D) All New Construction Grants requests, as described in (A) above, that are Ready for Apportionment shall be apportioned at the regularly scheduled Board meeting in August 2002 with the exception of New Construction Grants requests that meet the criteria of subsection (b)(2)(A)(1) or (2). Any New Construction Grants request that is Ready for Apportionment that meets the criteria of subsection (b)(2)(A)(1) or (2) may be apportioned at either the regularly scheduled Board meeting in July or August 2002.

(E) If the Approved Applications for New Construction Grants received between April 1, 2002 and June 26, 2002 that are Ready for Apportionment, all New Construction Grants requests that were included on an Unfunded List and New Construction Grants requests that meet the criteria of subsection (e) are less than the final allotment, plus any remaining funds from the previous quarter(s), the excess funds shall be apportioned on a monthly basis beginning in September 2002 for Approved Applications for New Construction Grants received after June 26, 2002 that are Ready for Apportionment, in descending order, commencing with the project having the greatest number of priority points. This process shall continue until the funds available are exhausted. If two or more projects have the same number of priority points, those projects shall be first ranked according to the Approved Application date.

(c) Approved Applications for New Construction Grants requests received during a quarter may, at the discretion of the Board, be considered for funding available for that quarter or a future quarter if all the following criteria are met:

(1) Either the Executive Officer of the Board, the State Architect, the Director of School Facilities Planning Division within the CDE, or the Chief of the School Property Evaluation and Cleanup Division within the Department of Toxic Substances Control (DTSC) certify to the OPSC that the district's application was delayed for a specified number of calendar days in relation to other similar applications submitted to that agency at the same time.

(2) The Approved Application date adjusted back in time for the number of calendar days the application was delayed is prior to the beginning of the quarter in which the application was received.

(d) Approved Applications for New Construction Grants requests received after June 26, 2002 may, at the discretion of the Board, be considered for funding available for the final allotment if all the following criteria are met:

(1) Either the Executive Officer of the Board, the State Architect, the Director of School Facilities Planning Division within the CDE, or the Chief of the School Property Evaluation and Cleanup Division within the DTSC certify to the OPSC that the district's application was delayed for a specified number of calendar days in relation to other similar applications submitted to that agency at the same time.

(2) The Approved Application date adjusted back in time for the number of calendar days the application was delayed is prior to June 27, 2002.

NOTE: Authority cited: Sections 17072.25 and 17070.35, Education Code. Reference: Section 17072.25, Education Code.

HISTORY

1. New section filed 12–3–98 as an emergency; operative 12–3–98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4–2–99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3–31–99 as an emergency; operative 3–31–99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7–29–99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7–29–99 as an emergency; operative 7–29–99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11–26–99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7–29–99 order transmitted to OAL 8–26–99 and filed 10–8–99 (Register 99, No. 41).
5. Amendment filed 1–2–2001 as an emergency; operative 1–2–2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5–2–2001 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 1–2–2001 order transmitted to OAL 5–1–2001 and filed 6–13–2001 (Register 2001, No. 24).
7. Amendment filed 5–2–2002; operative 6–1–2002 (Register 2002, No. 18).
8. Repealer of subsection (c), subsection relettering and amendment of NOTE filed 10–4–2002; operative 10–4–2002 pursuant to Government Code section 11343.4 (Register 2002, No. 40).
9. New first paragraph filed 11–4–2002 as an emergency; operative 11–4–2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11–4–2003 or emergency language will be repealed by operation of law on the following day.
10. Certificate of Compliance as to 11–4–2002 order transmitted to OAL 11–4–2003 and filed 12–19–2003 (Register 2003, No. 51).

§ 1859.92. Priority Points For New Construction Projects.

This Regulation shall only apply to Approved Applications for New Construction Grants funded with the proceeds of state bonds approved by the voters prior to January 1, 2002.

The priority points allowed for a New Construction Grants request shall be based on the following computations rounded up to the nearest whole number. The computation shall be made on a districtwide basis if the district utilized districtwide CBEDS enrollment data reported on the Form SAB 50–01 in effect at the time the district's application for funding was submitted to the OPSC for the project. When multiple applications have the same Approved Application date, or have an Approved Application date which permits the projects to be Ready for Apportionment in the same quarter when priority points are implemented as provided in Section 1859.91, the priority order shall be as requested by the district on the Form SAB 50–04. The computation shall be made on a HSAA or Super HSAA basis if the district utilized HSAA or Super HSAA CBEDS enrollment data reported on the Form SAB 50–01 in effect at the time the district's application for funding was submitted to the OPSC for the project. Notwithstanding the provisions of Section 1859.41, a district that has previously reported its enrollment on a HSAA or Super HSAA basis may calculate both its eligibility and its priority points on a districtwide basis. A project shall receive priority points based on the total of (a), (b) and (c):

(a) Priority points for the percent of unhoused pupils for both of the following:

(1) Six points for each percent of current unhoused pupils.

(2) Four points for each percent of projected unhoused pupils.

(b) Priority points for the number of unhoused pupils for both of the following:

(1) One point for each 100 currently unhoused pupils.

(2) One point for each 200 projected unhoused pupils.

(c) A maximum of 100 priority points for the following:

(1) Twenty points if the district's CBEDS enrollment at the time of application submittal to the OPSC for funding is less than 2,501.

(2) Twenty points for a County Superintendent of Schools' project that only includes classroom space solely for Non–Severely Disabled Individuals with Exceptional Needs.

(3) Twenty points if the site acreage for the project is less than 50 percent of the site size recommended by the CDE for the master planned pupil capacity.

(4) Twenty points for a project that either used "stock plans" pursuant to Education Code Section 17070.33(b)(6) or re–used plans that were previously used to construct at least two other schools.

(5) Twenty points if the district's CBEDS enrollment at the time of application submittal to the OPSC for funding is less than 301.

(6) Twenty points for a project that uses 20 percent less energy than the Energy Budget as defined and calculated in a manner consistent with the California Energy Code, Part 6, Subchapter 5, Section 141 — Performance Approach: Energy Budgets.

(7) Twenty points for a project that is a new high school serving any grades nine through twelve.

(8) Twenty points for a project that received financial hardship assistance pursuant to Section 1859.81.

(9) Twenty points for a project where the site acquisition qualified and received an apportionment authorized under Section 1859.75.1, Separate Site Apportionment for Environmental Hardship.

(10) One hundred points if the Approved Application was accepted prior to the date the priority point mechanism is implemented by the Board pursuant to Section 1859.91(a)(1) or (a)(2).

(d) The calculation of priority points in (a), (b) and (c) above shall be determined at the time the Approved Application is accepted.

(e) The following projects are exempt from priority points:

(1) A project that received Facility Hardship approval pursuant to Section 1859.82.

(2) A county superintendent of schools' project that includes classroom space for Severely Disabled Individuals with Exceptional Needs.

(3) A county superintendent of schools' project that only includes classroom space solely for community school pupils.

(4) A school district's project that only includes classroom space solely for Severely Disabled Individuals with Exceptional Needs.

(f) If the project received a separate site and/or design apportionment under the provisions of the LPP or pursuant to Sections 1859.75.1 or 1859.81.1, the district's funding priority of the project shall be determined by the Approved Application date for the New Construction Adjusted Grant or separate site funding request filed pursuant to Section 1859.81.1(a) or 1859.75.1. If separate site funding requests have been submitted, the funding priority of the project shall be determined by the CBEDS enrollment data utilized for those applications.

NOTE: Authority cited: Sections 17070.35, 17072.25 and 100420(d), Education Code. Reference: Sections 17070.33 and 17072.25, Education Code.

HISTORY

1. New section filed 12–3–98 as an emergency; operative 12–3–98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4–2–99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3–31–99 as an emergency; operative 3–31–99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7–29–99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7–29–99 as an emergency; operative 7–29–99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11–26–99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7–29–99 order, including amendment of section and NOTE, transmitted to OAL 8–26–99 and filed 10–8–99 (Register 99, No. 41).

5. Amendment of first paragraph filed 6–26–2000; operative 6–26–2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
6. Amendment of section and NOTE filed 1–2–2001 as an emergency; operative 1–2–2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5–2–2001 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 1–2–2001 order transmitted to OAL 5–1–2001 and filed 6–13–2001 (Register 2001, No. 24).
8. Amendment of first paragraph filed 4–10–2002; operative 4–10–2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).
9. Amendment of first paragraph and subsection (f) filed 9–9–2002; operative 9–9–2002 pursuant to Government Code section 11343.4 (Register 2002, No. 37).
10. New first paragraph and amendment of second paragraph filed 11–4–2002 as an emergency; operative 11–4–2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11–4–2003 or emergency language will be repealed by operation of law on the following day.
11. Certificate of Compliance as to 11–4–2002 order transmitted to OAL 11–4–2003 and filed 12–19–2003 (Register 2003, No. 51).

§ 1859.93. Modernization Project Funding Order.

All modernization applications shall be funded in the order of receipt of an Approved Application for funding until all modernization funds available to the Board have been apportioned.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17074.15, Education Code.

HISTORY

1. New section filed 12–3–98 as an emergency; operative 12–3–98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4–2–99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3–31–99 as an emergency; operative 3–31–99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7–29–99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7–29–99 as an emergency; operative 7–29–99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11–26–99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7–29–99 order transmitted to OAL 8–26–99 and filed 10–8–99 (Register 99, No. 41).
5. Amendment filed 1–2–2001 as an emergency; operative 1–2–2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5–2–2001 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 1–2–2001 order transmitted to OAL 5–1–2001 and filed 6–13–2001 (Register 2001, No. 24).
7. Amendment of section heading filed 11–4–2002 as an emergency; operative 11–4–2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11–4–2003 or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 11–4–2002 order transmitted to OAL 11–4–2003 and filed 12–19–2003 (Register 2003, No. 51).

§ 1859.93.1. New Construction Project Funding Order.

All new construction applications, except those new construction applications identified in (a) through (c) below, shall be funded in the order of receipt of an Approved Application for funding.

(a) Approved Applications for New Construction Grant(s) funded with the proceeds of state bonds approved by the voters prior to January 1, 2002.

(b) Approved Applications for New Construction Grant(s) authorized by Education Code Sections 17078.10 through 17078.30.

(c) Approved Applications that utilize pupil eligibility derived from the Alternative Enrollment Projection method. These applications shall be funded in order of receipt once the OPSC and the DRU have approved the Alternative Enrollment Projection method or the Alternative Enrollment Projection annual update.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17072.25 and 17070.35, Education Code.

HISTORY

1. New section filed 11–4–2002 as an emergency; operative 11–4–2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11–4–2003 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 11–4–2002 order transmitted to OAL 11–4–2003 and filed 12–19–2003 (Register 2003, No. 51).
3. Amendment of first paragraph and new subsection (c) filed 5–15–2006 as an emergency; operative 5–15–2006 (Register 2006, No. 20). A Certificate of Compliance must be transmitted to OAL by 9–12–2006 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 5–15–2006 order transmitted to OAL 7–19–2006 and filed 8–11–2006 (Register 2006, No. 32).

§ 1859.93.2. New Construction Adjusted Grant for the Small High School Program.

A district may submit an Approved Application for a Small High School project from January 1, 2006 through September 30, 2007, if all of the following are met:

(a) The Application meets all the criteria on the Form SAB 50–04 for a New Construction Adjusted Grant, pursuant to Section 1859.21.

(b) The district has at least 500 high school pupil grants of new construction eligibility available pursuant to Regulation Section 1859.50 and 1859.51.

(c) The Small High School may be constructed on one of the following:

(1) A stand alone school site with no existing facilities;

(2) An adjacent site to an existing high school and share core facilities including, but not limited to library, multi–purpose room and gymnasium. The existing high school and new small high school may not share administration and toilet facilities.

(3) A site of a large high school if the CDE deems that the site will not create a school that is overcrowded or educationally inadequate; or

(4) Two or more small high schools may be constructed on separate but adjacent sites and may share one or all of the core facilities in(c)(2).

(d) The Small High School may not be constructed where it would otherwise have been built due to sparse population.

(e) The district shall only provide the number of classrooms at the new school site necessary to house the capacity of the Small High School, not to exceed 500 pupils, until two complete school years after the Occupancy of the last Small High School funded pursuant to Education Code Section 17072.10(c)(1), which would correspond with timing of the data submitted by the district pursuant to Section 1859.104(e)(2).

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17072.10, Education Code.

HISTORY

1. New section filed 3–14–2006; operative 3–14–2006 pursuant to Government Code section 11343.4 (Register 2006, No. 11).
2. Amendment of first paragraph and subsection (c) and new subsections (c)(1)–(4) filed 5–17–2007; operative 5–17–2007 pursuant to Government Code section 11343.4 (Register 2007, No. 20).

§ 1859.93.3. New Construction Small High School Program Funding Order.

Approved Applications shall be identified in each of the following categories:

(a) By Geographical Region One (North), Three/Four (South), or Two (Central).

(b) By Urban, Suburban and Rural areas.

Projects will be identified according to the numerical score for the district's academic reform strategy as determined by the California Department of Education within each category (a) and (b) above, from highest to lowest. The Board shall apportion to the highest ranked project of each possible type starting with the order listed in category (a) and continuing with the order listed in category (b) until all funds are apportioned.

No district shall receive more than one apportionment unless all other qualified districts within the applicant's corresponding categories (a) and (b) have been awarded.

After all apportionments have been made for projects approved under Section 1859.93.2, any remaining funds pursuant to Education Code Section 17072.10(c) shall be made available for eligible new construction projects pursuant to this Act.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17072.10, Education Code.

HISTORY

1. New section filed 3–14–2006; operative 3–14–2006 pursuant to Government Code section 11343.4 (Register 2006, No. 11).

§ 1859.94. Hardship Funding.

(a) Hardship assistance provided as a part of a New Construction Grant shall be subject to the same priority point determination as the New Construction Grant.

(b) To the extent that hardship funds are available, the Board may elect to specifically set aside funding for financial hardship grants as provided in Section 1859.81, facility hardship grants as provided in Section 1859.82 or Excessive Cost Hardship Grants as provided in Section 1859.83.

(c) Should a district request hardship funding for either a financial hardship grant pursuant to Section 1859.81, a facility hardship grant pursuant to Section 1859.82 or an Excessive Cost Hardship Grant pursuant to Section 1859.83 and the Board has no funds to allocate for that specific hardship, the district may elect to either:

(1) Accept funding for the project less any hardship funding grants that are not available. When this option is selected, the hardship funding grants not allocated for the project shall be placed on the Unfunded List. If the project was previously placed on the Unfunded List, the project shall retain the original date it was placed on that Unfunded List.

(2) Decline to accept funding for the project. When this option is selected, the project shall be placed on the Unfunded List. If the project was previously placed on the Unfunded List, the project shall retain the original date it was placed on that Unfunded List.

A project or portion of a new construction project not funded as a result of subdivision (c) shall be subject to the Board's priority point mechanism pursuant to Sections 1859.91 and 1859.92.

NOTE: Authority cited: Sections 17075.15 and 17070.35, Education Code. Reference: Section 17075.15, Education Code.

HISTORY

1. New section filed 12–3–98 as an emergency; operative 12–3–98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4–2–99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3–31–99 as an emergency; operative 3–31–99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7–29–99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7–29–99 as an emergency; operative 7–29–99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11–26–99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7–29–99 order transmitted to OAL 8–26–99 and filed 10–8–99 (Register 99, No. 41).
5. Amendment of subsection (c) filed 1–2–2001 as an emergency; operative 1–2–2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5–2–2001 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 1–2–2001 order transmitted to OAL 5–1–2001 and filed 6–13–2001 (Register 2001, No. 24).
7. Amendment of subsections (c)–(c)(2) filed 8–13–2001; operative 8–13–2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).

§ 1859.95. Acceptance of Applications When Funding Is Unavailable.

When the Board has no funds to apportion or the application does not qualify for funding because of the Board's priority point mechanism pursuant to Sections 1859.91 and 1859.92, the Board will continue to accept and process applications for eligibility determination, with the exception of applications that include a request for review of an Alternative Enrollment Projection method. The Board will also accept and process applications for apportionment for purposes of developing an Unfunded List based on the date the application is Ready for Apportionment, with the exception of New Construction funding applications that utilize eligibility generated by the Alternative Enrollment Projection.

The Board will return any applications for the review of the Alternative Enrollment Projection method and New Construction applications that utilize eligibility generated by the Alternative Enrollment Projection once the funding apportioned for these projects reaches $500 million or the Board has no funds to apportion from the Kindergarten–University Public Education Facilities Bond Act of 2004.

If either the Executive Officer of the Board, the State Architect, the Director of School Facilities Planning Division within the CDE or the Chief of the School Property Evaluation and Cleanup Division within the Department of Toxic Substances Control certify to the OPSC that the district's application was delayed for a specified number of calendar days in relation to other similar applications submitted to that agency at the same time, the application may, at the discretion of the Board, receive a date on the Unfunded List or receive funding pursuant to Section 1859.91 based on the date the application is Ready for Apportionment, adjusted back in time for the number of calendar days the application was delayed.

Applications for New Construction Adjusted Grants for a project where the site was apportioned pursuant to Section 1859.75.1 shall receive a date on the Unfunded List based on the date the environmental hardship site apportionment was made for the project.

With the exception of financial hardship eligibility, a district with an application included on an Unfunded List shall not be required to re–establish eligibility for that application prior to apportionment.

An application for funding included on an Unfunded List is eligible for reimbursement subject to adjustments in the New Construction Grants amount pursuant to Section 1859.77.

NOTE: Authority cited: Sections 17070.35 and 17072.25, Education Code. Reference: Sections 17070.35 and 17071.75, Education Code.

HISTORY

1. New section filed 12–3–98 as an emergency; operative 12–3–98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4–2–99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3–31–99 as an emergency; operative 3–31–99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7–29–99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7–29–99 as an emergency; operative 7–29–99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11–26–99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7–29–99 order transmitted to OAL 8–26–99 and filed 10–8–99 (Register 99, No. 41).
5. Amendment filed 6–26–2000; operative 6–26–2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
6. Amendment of section and NOTE filed 1–2–2001 as an emergency; operative 1–2–2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5–2–2001 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 1–2–2001 order transmitted to OAL 5–1–2001 and filed 6–13–2001 (Register 2001, No. 24).
8. Amendment of first paragraph filed 8–13–2001; operative 8–13–2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).
9. Amendment filed 5–2–2002; operative 6–1–2002 (Register 2002, No. 18).
10. Amendment of first paragraph, new second paragraph and amendment of NOTE filed 5–15–2006 as an emergency; operative 5–15–2006 (Register 2006, No. 20). A Certificate of Compliance must be transmitted to OAL by 9–12–2006 or emergency language will be repealed by operation of law on the following day.
11. Certificate of Compliance as to 5–15–2006 order transmitted to OAL 7–19–2006 and filed 8–11–2006 (Register 2006, No. 32).

Article 11. Miscellaneous School Facility Program Requirements

§ 1859.100. Restricted On–Going and Major Maintenance Fund.

A district, regardless of size, shall certify on the Form SAB 50–04, the Form SAB 50–07 or the Form SAB 50–08, that a restricted account within the district's general fund has been established for the exclusive purpose of providing on–going and major repair of its facilities, pursuant to Education Code Section 17070.75.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.75, 17077.40 and 17078.10, Education Code.

HISTORY

1. New article 11 (sections 1859.100–1859.106) and section filed 12–3–98 as an emergency; operative 12–3–98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4–2–99 or emergency language will be repealed by operation of law on the following day.
2. New article 11 (sections 1859.100–1859.106) and section refiled 3–31–99 as an emergency; operative 3–31–99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7–29–99 or emergency language will be repealed by operation of law on the following day.
3. Amendment filed 7–12–99 as an emergency; operative 7–12–99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11–9–99 or emergency language will be repealed by operation of law on the following day.
4. New article 11 (sections 1859.100–1859.106) and section refiled 7–29–99 as an emergency; operative 7–29–99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11–26–99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7–29–99 order, including amendment of section, transmitted to OAL 8–26–99 and filed 10–8–99 (Register 99, No. 41).
6. Certificate of Compliance as to 7–12–99 order, including further amendments, transmitted to OAL 11–5–99 and filed 12–22–99 (Register 99, No. 52).
7. Amendment filed 6–26–2000; operative 6–26–2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
8. Amendment filed 7–17–2000 as an emergency; operative 7–17–2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11–14–2000 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 7–17–2000 order transmitted to OAL 11–9–2000 and filed 12–27–2000 (Register 2000, No. 52).
10. Amendment filed 1–2–2001 as an emergency; operative 1–2–2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5–2–2001 or emergency language will be repealed by operation of law on the following day.
11. Certificate of Compliance as to 1–2–2001 order transmitted to OAL 5–1–2001 and filed 6–13–2001 (Register 2001, No. 24).
12. Amendment filed 7–25–2001; operative 7–25–2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).
13. Amendment of section filed 8–13–2001; operative 8–13–2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).
14. Amendment filed 4–10–2002; operative 4–10–2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).
15. Amendment filed 5–2–2002; operative 6–1–2002 (Register 2002, No. 18).
16. Amendment filed 8–12–2002 as an emergency; operative 8–12–2002 (Register 2002, No. 33). A Certificate of Compliance must be transmitted to OAL by 12–10–2002 or emergency language will be repealed by operation of law on the following day.
17. Amendment of section and NOTE filed 11–4–2002 as an emergency; operative 11–4–2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11–4–2003 or emergency language will be repealed by operation of law on the following day.
18. Certificate of Compliance as to 8–12–2002 order transmitted to OAL 12–3–2002 and filed 1–16–2003 (Register 2003, No. 3).
19. Certificate of Compliance as to 11–4–2002 order transmitted to OAL 11–4–2003 and filed 12–19–2003 (Register 2003, No. 51).

§ 1859.101. Districts that are Exempt from the Specified Annual Deposit.

A district, including a county superintendent of schools, that is not required to make a specified annual deposit into the restricted maintenance account as provided in Education Code Section 17070.75 must certify on the Form SAB 50–04, the Form SAB 50–07 or the Form SAB 50–08, that the district can maintain its facilities with a lesser annual deposit.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.75, 17077.40 and 17078.10, Education Code.

HISTORY

1. New section filed 12–3–98 as an emergency; operative 12–3–98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4–2–99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3–31–99 as an emergency; operative 3–31–99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7–29–99 or emergency language will be repealed by operation of law on the following day.
3. Amendment filed 7–12–99 as an emergency; operative 7–12–99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11–9–99 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 7–29–99 as an emergency; operative 7–29–99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11–26–99 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 7–29–99 order, including amendment of section, transmitted to OAL 8–26–99 and filed 10–8–99 (Register 99, No. 41).
6. Certificate of Compliance as to 7–12–99 order, including further amendments, transmitted to OAL 11–5–99 and filed 12–22–99 (Register 99, No. 52).
7. Amendment filed 6–26–2000; operative 6–26–2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
8. Amendment filed 7–17–2000 as an emergency; operative 7–17–2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11–14–2000 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 7–17–2000 order transmitted to OAL 11–9–2000 and filed 12–27–2000 (Register 2000, No. 52).
10. Amendment filed 1–2–2001 as an emergency; operative 1–2–2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5–2–2001 or emergency language will be repealed by operation of law on the following day.
11. Certificate of Compliance as to 1–2–2001 order transmitted to OAL 5–1–2001 and filed 6–13–2001 (Register 2001, No. 24).
12. Amendment filed 7–25–2001; operative 7–25–2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).
13. Amendment of section filed 8–13–2001; operative 8–13–2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).
14. Amendment filed 4–10–2002; operative 4–10–2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).
15. Amendment filed 5–2–2002; operative 6–1–2002 (Register 2002, No. 18).
16. Amendment filed 8–12–2002 as an emergency; operative 8–12–2002 (Register 2002, No. 33). A Certificate of Compliance must be transmitted to OAL by 12–10–2002 or emergency language will be repealed by operation of law on the following day.
17. Amendment of section and NOTE filed 11–4–2002 as an emergency; operative 11–4–2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11–4–2003 or emergency language will be repealed by operation of law on the following day.
18. Certificate of Compliance as to 8–12–2002 order transmitted to OAL 12–3–2002 and filed 1–16–2003 (Register 2003, No. 3).
19. Certificate of Compliance as to 11–4–2002 order transmitted to OAL 11–4–2003 and filed 12–19–2003 (Register 2003, No. 51).

§ 1859.102. Maintenance Plan.

A district shall certify on the Form SAB 50–04, the Form SAB 50–07 or the Form SAB 50–08, that it has developed and implemented an on–going and major maintenance plan in accordance with Education Code Section 17070.75 and 17070.77. In each fiscal year following the fiscal year in which the district received funds as a result of an application funded on or after January 1, 2002, the district shall certify that the plan has been reviewed and updated as required in Education Code Section 17070.77. The certification shall be made on the Deferred Maintenance Five Year Plan, which shall be required annually from those districts receiving such funding.

Any maintenance plan developed in accordance with Education Code Section 17070.75(b)(3) shall be deemed to meet the requirements for an additional basic apportionment as provided under Education Code Section 17585.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.75, 17070.77 and 17077.40, Education Code.

HISTORY

1. New section filed 12–3–98 as an emergency; operative 12–3–98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4–2–99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3–31–99 as an emergency; operative 3–31–99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7–29–99 or emergency language will be repealed by operation of law on the following day.
3. Amendment of first paragraph filed 7–12–99 as an emergency; operative 7–12–99 (Register 99, No. 29). A Certificate of Compliance must be transmitted to OAL by 11–9–99 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 7–29–99 as an emergency; operative 7–29–99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11–26–99

or emergency language will be repealed by operation of law on the following day.

5. Certificate of Compliance as to 7–29–99 order, including amendment of section, transmitted to OAL 8–26–99 and filed 10–8–99 (Register 99, No. 41).
6. Certificate of Compliance as to 7–12–99 order, including further amendments, transmitted to OAL 11–5–99 and filed 12–22–99 (Register 99, No. 52).
7. Amendment filed 6–26–2000; operative 6–26–2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
8. Amendment of first paragraph filed 7–17–2000 as an emergency; operative 7–17–2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11–14–2000 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 7–17–2000 order transmitted to OAL 11–9–2000 and filed 12–27–2000 (Register 2000, No. 52).
10. Amendment filed 1–2–2001 as an emergency; operative 1–2–2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5–2–2001 or emergency language will be repealed by operation of law on the following day.
11. Certificate of Compliance as to 1–2–2001 order transmitted to OAL 5–1–2001 and filed 6–13–2001 (Register 2001, No. 24).
12. Amendment filed 7–25–2001; operative 7–25–2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).
13. Amendment of first paragraph filed 8–13–2001; operative 8–13–2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).
14. Amendment of first paragraph filed 4–10–2002; operative 4–10–2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).
15. Amendment of section and NOTE filed 5–2–2002; operative 6–1–2002 (Register 2002, No. 18).
16. Amendment of first paragraph filed 8–12–2002 as an emergency; operative 8–12–2002 (Register 2002, No. 33). A Certificate of Compliance must be transmitted to OAL by 12–10–2002 or emergency language will be repealed by operation of law on the following day.
17. Amendment of first paragraph and NOTE filed 11–4–2002 as an emergency; operative 11–4–2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11–4–2003 or emergency language will be repealed by operation of law on the following day.
18. Certificate of Compliance as to 8–12–2002 order transmitted to OAL 12–3–2002 and filed 1–16–2003 (Register 2003, No. 3).
19. Certificate of Compliance as to 11–4–2002 order transmitted to OAL 11–4–2003 and filed 12–19–2003 (Register 2003, No. 51).

§ 1859.103. Savings.

A district may expend the savings not needed for a project on other high priority capital facility needs of the district including the relocation of district facilities necessary as a result of Subdivision (b) of Education Code Section 17072.12. The grants for the projects funded pursuant to Section 1859.70.2 or Section 1859.180 shall be limited to eligible expenditures, up to the State Apportionment for the project. Savings may be declared by the district in writing to the OPSC any time after the release of all funds for the project.

With the exception of savings attributable to a site apportionment made pursuant to Sections 1859.74.5 or 1859.81.2, the State's portion of any savings declared by the district or determined by the OPSC by audit must be used to to reduce the SFP financial hardship grant of that project or other financial hardship projects within the district for a period of three years from the date the savings were declared by the district or determined by the OPSC audit. The State's portion of any savings from a new construction project or a Joint–Use Project may be used as a district matching share requirement, only on another new construction project, and the State's share of any savings from a modernization project may be used as a district matching share requirement, only on another modernization project.

Any interest earned on a financial hardship project not expended on eligible project expenditures will be treated as savings and will be used to reduce the SFP financial hardship grant for that project.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.63, 17072.12, 17077.40 and 17079.20, Education Code.

HISTORY

1. New section filed 12–3–98 as an emergency; operative 12–3–98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4–2–99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3–31–99 as an emergency; operative 3–31–99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7–29–99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7–29–99 as an emergency; operative 7–29–99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11–26–99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7–29–99 order, including amendment of section, transmitted to OAL 8–26–99 and filed 10–8–99 (Register 99, No. 41).
5. New third paragraph filed 6–26–2000; operative 6–26–2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
6. Amendment of second paragraph and NOTE filed 11–4–2002 as an emergency; operative 11–4–2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11–4–2003 or emergency language will be repealed by operation of law on the following day.
7. Amendment of section and NOTE filed 2–6–2003; operative 2–6–2003 pursuant to Government Code section 11343.4 (Register 2003, No. 6).
8. Editorial correction of second paragraph (Register 2003, No. 7).
9. Amendment of last paragraph filed 2–13–2003 as an emergency pursuant to Education Code section 17078.64(b); operative 2–13–2003 (Register 2003, No. 7). A Certificate of Compliance must be transmitted to OAL by 6–13–2003 or emergency language will be repealed by operation of law on the following day.
10. Amendment of last paragraph refiled 6–13–2003 as an emergency; operative 6–13–2003 (Register 2003, No. 24). A Certificate of Compliance must be transmitted to OAL by 10–13–2003 or emergency language will be repealed by operation of law on the following day.
11. Amendment of last paragraph refiled 10–9–2003 as an emergency; operative 10–9–2003 (Register 2003, No. 41). A Certificate of Compliance must be transmitted to OAL by 2–6–2004 or emergency language will be repealed by operation of law on the following day.
12. Certificate of Compliance as to 11–4–2002 order transmitted to OAL 11–4–2003 and filed 12–19–2003 (Register 2003, No. 51).
13. Certificate of Compliance as to 10–9–2003 order transmitted to OAL 2–6–2004 and filed 3–23–2004 (Register 2004, No. 13).
14. Amendment of first paragraph filed 7–22–2004 as an emergency; operative 7–22–2004 (Register 2004, No. 30). A Certificate of Compliance must be transmitted to OAL by 11–19–2004 or emergency language will be repealed by operation of law on the following day.
15. Certificate of Compliance as to 7–22–2004 order transmitted to OAL 11–12–2004 and filed 12–16–2004 (Register 2004, No. 51).
16. Amendment of first paragraph and NOTE filed 8–31–2007; operative 8–31–2007 pursuant to Government Code section 11343.4 (Register 2007, No. 35).

§ 1859.104. Program Reporting Requirements.

A district receiving funds in accordance with the Act shall submit the following:

(a) An expenditure report from the district on the Form SAB 50–06. The program reporting requirements are as follows:

(1) The first expenditure report shall be due one year from the date that any funds were released to the district for the project pursuant to Section 1859.90, or upon completion of the project, whichever occurs first. A project shall be deemed complete when either of the following occur:

(A) When the notice of completion for the project has been filed, all outstanding invoices, claims, change orders have been satisfied and the facility is currently in use by the district.

(B) Three years from the date of the final fund release for an elementary school project or four years from the date of the final fund release for a middle or high school project.

(2) The second and subsequent expenditure reports, if necessary, shall be due annually beginning one year from the first report, or upon completion of the project, whichever occurs first. The final expenditure report must be made no later than three years from the date of the final fund release for an elementary school project or four years from the date of the final fund release for a middle or high school project.

(b) With the exception of projects that qualify for an apportionment pursuant to Section 1859.75.1, a progress report, in the form of a narrative from the district, shall be due 18 months from the date any funds were released to the district for the project pursuant to Section 1859.90. The progress report shall include information regarding the progress the district has made towards substantial completion of the project. If the notice of completion has been filed within 18 months of the release of funds pursuant to Section 1859.90, or the expenditure reports required in (a)(1) or (2) indicate that substantial progress (as defined in Section 1859.105) on the project has occurred, no progress report is required.

(c) A progress report, in the form of a narrative from the district, shall be due 12 months from the date the site acquisition funds were apportioned to the district for the project pursuant to Section 1859.75.1. The progress report shall include information regarding the progress the district has made towards acquiring the site as outlined in Section 1859.105.1 and may contain other evidence of reasonable effort to substantiate progress towards acquiring the site for purposes of an extension of the site apportionment as authorized by Education Code Section 17072.13(c)(2).

(d) If an apportionment was made for a district–owned site pursuant to Section 1859.74.5, a certification that the non–school function currently taking place on the district–owned site has been discontinued or relocated. The certification must be submitted to the OPSC no later than the following dates:

(1) If the project is for an elementary school, 66 months from the date of the site apportionment.

(2) For all other projects, 78 months from the date of the site apportionment.

(e) If an Apportionment was made under the Small High School Program pursuant to:

(1) Section 1859.78.9 or Section 1859.93.2, a cost evaluation report shall be due to the OPSC no later than two complete school years after the Occupancy of the approved project.

(2) Section 1859.93.2, the district must provide a preliminary report on any academic data requested by CDE two complete school years after the Occupancy of the approved project. The final report shall be due no later than two complete school years after the OPSC notifies the district of the Occupancy of the last approved project.

(f) If an Apportionment was made under the Overcrowding Relief Grant pursuant to Section 1859.180, the School District must provide a certification that the replaced portables were removed from the eligible site and from service pursuant to Education Code Section 17079.30.

NOTE: Authority cited: Sections 17070.35, 17072.13 and 17079.30, Education Code. Reference: Sections 17070.35, 17070.99, 17072.12, 17072.13, 17076.10 and 17079.30, Education Code.

HISTORY

1. New section filed 12–3–98 as an emergency; operative 12–3–98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4–2–99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3–31–99 as an emergency; operative 3–31–99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7–29–99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7–29–99 as an emergency; operative 7–29–99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11–26–99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7–29–99 order, including amendment of section, transmitted to OAL 8–26–99 and filed 10–8–99 (Register 99, No. 41).
5. Amendment of subsection (a) filed 3–13–2000; operative 4–12–2000 (Register 2000, No. 11).
6. Amendment of subsections (a) and (b), new subsection (c) and amendment of NOTE filed 6–26–2000; operative 6–26–2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
7. Amendment of subsection (b) filed 9–9–2002; operative 9–9–2002 pursuant to Government Code section 11343.4 (Register 2002, No. 37).
8. Amendment of subsection (a) filed 11–4–2002 as an emergency; operative 11–4–2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11–4–2003 or emergency language will be repealed by operation of law on the following day.
9. New subsections (d)–(d)(2) and amendment of NOTE filed 2–6–2003; operative 2–6–2003 pursuant to Government Code section 11343.4 (Register 2003, No. 6).
10. Certificate of Compliance as to 11–4–2002 order transmitted to OAL 11–4–2003 and filed 12–19–2003 (Register 2003, No. 51).
11. New subsections (e)–(e)(2) and amendment of NOTE filed 3–14–2006; operative 3–14–2006 pursuant to Government Code section 11343.4 (Register 2006, No. 11).
12. New subsection (f) and amendment of NOTE filed 8–31–2007; operative 8–31–2007 pursuant to Government Code section 11343.4 (Register 2007, No. 35).

§ 1859.104.1. Material Inaccuracy Penalties.

When the Board makes a finding that a Material Inaccuracy occurred for a SFP Project, the district shall be subject to the following penalties:

(a) If the Material Inaccuracy finding occurred prior to the apportionment, the district shall be:

(1) Prohibited from self–certifying the project information for a period of up to five years from the date the Board made the finding of Material Inaccuracy for the project. A prohibition from self–certification of project information may be less than five years as determined on a case–by–case basis by the Board.

(2) Required to file all projects pursuant to Section 1859.104.2. for the time period required in subsection (a)(1).

(3) Subject to the fee prescribed by Section 1859.104.3.

(b) If the Material Inaccuracy finding occurred after the apportionment but no funds have been released for the project:

(1) The Board shall reduce the project apportionment by the additional funding received beyond the amount the district was entitled to for the project.

(2) The school district shall be prohibited from self–certifying project information for a period of up to five years from the date the Board made the finding of Material Inaccuracy for the project. A prohibition from self–certification of project information may be less than five years as determined on a case–by–case basis by the Board.

(3) The school district shall be required to file all projects pursuant to Section 1859.104.2 for the time period required in subsection (b)(2).

(4) The school district shall be subject to the fee prescribed by Section 1859.104.3.

(c) If the Material Inaccuracy finding occurred after the apportionment and funds were released for the project, the district:

(1) Must repay the additional funding received beyond the amount the district was entitled to for the project with interest within five years from the date the Board made the finding of Material Inaccuracy. Interest shall be assessed as prescribed in Education Code Section 17070.51(b)(1).

(2) Shall be prohibited from self–certifying project information for a period of up to five years from the date the Board made the finding of Material Inaccuracy for the project. A prohibition from self–certification of project information may be less than five years as determined on a case–by–case basis by the Board.

(3) Shall be required to file all projects pursuant to Section 1859.104.2 for the time period required in subsection (c)(2).

(4) Shall be subject to the fee prescribed by Section 1859.104.3.

(d) The Board may direct that adjustments to the school district's New Construction or Modernization baseline eligibility be made pursuant to Sections 1859.51 and 1859.61 based on the determination of Material Inaccuracy.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.51 and 17077.40, Education Code.

HISTORY

1. New section filed 5–2–2002; operative 6–1–2002 (Register 2002, No. 18).
2. Amendment of section and NOTE filed 11–4–2002 as an emergency; operative 11–4–2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11–4–2003 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 11–4–2002 order transmitted to OAL 11–4–2003 and filed 12–19–2003 (Register 2003, No. 51).

§ 1859.104.2. Self–Certification Prohibition.

If the Board has made a finding of Material Inaccuracy pursuant to Section 1859.104.1, the OPSC may request supporting documentation as it deems appropriate for any application filed after a finding of material inaccuracy for the time prescribed in 1859.104.1(a)(1), (b)(2) or (c)(2).

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17070.51, Education Code.

HISTORY

1. New section filed 5–2–2002; operative 6–1–2002 (Register 2002, No. 18).

§ 1859.104.3. Self–Certification Prohibition Processing Fee.

If the Board has made a finding of Material Inaccuracy pursuant to Section 1859.104.1, the Board shall charge the district an amount of $100 per hour for the additional hours necessary to process and review the district's applications submitted during the timelines prescribed in Section 1859.104.1(a)(1), (b)(2) or (c)(2). The maximum hours subject to the fee per application is the greater of 50 hours or one percent of the enrollment of the district as reported in Part A, the continuation high pupils reported in Part C, and the special day class pupils reported in Part D of Form SAB 50–01. The Board will not make a release of funds for any project subject to the fee in this section until the fee has been remitted to the OPSC. All fees collected shall be deposited in the School Facility Fund and available for apportionment as directed by the Board.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17070.51, Education Code.

HISTORY

1. New section filed 5–2–2002; operative 6–1–2002 (Register 2002, No. 18).
2. Amendment filed 11–4–2002 as an emergency; operative 11–4–2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11–4–2003 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 11–4–2002 order transmitted to OAL 11–4–2003 and filed 12–19–2003 (Register 2003, No. 51).
4. Amendment filed 10–27–2005; operative 10–27–2005 pursuant to Government Code section 11343.4 (Register 2005, No. 43).
5. Amendment filed 3–3–2008 as an emergency; operative 3–3–2008 (Register 2008, No. 10). A Certificate of Compliance must be transmitted to OAL by 9–2–2008 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 3–3–2008 order, including further amendment of section, transmitted to OAL 6–9–2008 and filed 7–10–2008 (Register 2008, No. 28).

§ 1859.105. Program Accountability Progress Audit.

(a) When the district has received funds for a SFP project, the Board shall conduct a review to assure the district has made substantial progress in the completion of the project pursuant to Education Code Section 17076.10(b). The review shall consist of an analysis of the district's progress report in accordance with Section 1859.104(b). Sufficient evidence of substantial progress shall be any of the following:

(1) At least 75 percent of all site development work that is necessary prior to building construction activity is complete.

(2) At least 90 percent of the building construction activities are under contract, unless the building construction activities are delayed as a result of necessary site development work.

(3) All construction activities are at least 50 percent complete.

(4) Other evidence satisfactory to the Board of circumstances beyond the control of the district that precludes substantial progress being made.

(b) When the district has received funds pursuant to Section 1859.81.1(a), the Board shall conduct a review to assure the district has made substantial progress in the completion of the project. The audit shall consist of a review and analysis of the district's progress report in accordance with Section 1859.104(b). Acceptable evidence of substantial progress shall be when the district has completed all of the following:

(1) Obtained the final appraisal of the site; and,

(2) Completed all California Environmental Quality Act requirements; and,

(3) Obtained final approval of the site by the CDE; and,

(4) Provided final escrow instructions or evidence the district has filed condemnation proceedings and intends to request an order of possession of the site; or,

(5) Other evidence satisfactory to the Board detailing the reason(s) and circumstance(s) beyond the control of the district that precludes substantial progress being made. If the Board determines that substantial progress has been made pursuant to Education Code Section 17076.10(b), the Board shall condition its finding of substantial progress upon the district's commitment to complete and submit satisfactory evidence that the district meets the provisions of Section 1859.105(b)(1) through (b)(4) within a period not to exceed 18 months from the date of the Board's determination of substantial progress.

(c) When the district has received funds pursuant to Section 1859.81.1(e), the Board shall conduct a review to assure the district has made substantial progress in the completion of the project. Sufficient evidence of substantial progress shall be any of the following:

(1) An Approved New Construction or Modernization Adjusted Grant Application; or

(2) A school district certification that the final building plans for the project have been submitted to and accepted by the DSA for review and approval; or

(3) An approved separate site funding application pursuant to Section 1859.81.1(a) or an approved environmental hardship funding application pursuant to Section 1859.75.1 or an approved Preliminary Apportionment pursuant to Section 1859.140, that met the criteria of Section 1859.142(b); or

(4) Other evidence satisfactory to the Board detailing the reason(s) that plans have not been completed and accepted by the DSA. If the Board determines that substantial progress has been made pursuant to Education Code Section 17076.10(b), the Board shall condition its finding of substantial progress upon the district's commitment to complete and submit an Approved New Construction or Modernization Adjusted Grant Application within a period not to exceed 18 months from the date of the Board's determination of substantial progress.

After the Board has received the progress report required in Section 1859.104(b) for items (a), (b), and (c) above, a review and analysis of the report by the OPSC will be made for compliance with this Section within 60 days of the submittal of the report by the district. The OPSC must notify the district within 60 days of the submittal of the report if it intends to recommend to the Board that no substantial progress has been made on the project. If the OPSC does not respond to the district within 60 days of submittal of the report, the OPSC concurs with the district that substantial progress has been made.

Should the OPSC respond within 60 days of submittal of the progress report by the district that no substantial progress has been made or the district fails to submit the progress report within the timelines in Section 1859.104 (b) for items (a), (b), and (c) above or the district has not filed an Approved Application for funds received pursuant to Section 1859.81.1(b), the district must report the final expenditures on the project on the Form SAB 50–06, to the OPSC within 60 days of the OPSC notification. After receipt of the expenditure report, the OPSC will recommend to the Board that a finding be made that no substantial progress on the project has been made and that the apportionment be reduced, after accounting for the district's matching share, by any funds not yet committed by a contract for the project and any interest earned on State funds for the project. The recommendation will be made at the next regularly scheduled Board meeting. If the expenditure report is not received within the 60 day period, the OPSC will recommend that the apportionment be rescinded and any interest earned on State funds be returned to the State.

If the apportionment is reduced or rescinded as a result of a finding by the Board that no substantial progress has been made on the project, the pupils assigned to the project will be added to the district's baseline eligibility. If the apportionment was reduced, the adjustment to the baseline eligibility shall reflect any funding retained by the district based on the New Construction or Modernization Adjusted Grant funding provided for the project. The district may refile a new application for the project subject to district eligibility and priority funding at the time of resubmittal.

NOTE: Authority cited: Sections 17070.35 and 17072.13, Education Code. Reference: Sections 17070.35, 17076.10 and 17077.40, Education Code.

HISTORY

1. New section filed 12–3–98 as an emergency; operative 12–3–98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4–2–99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3–31–99 as an emergency; operative 3–31–99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7–29–99

or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7–29–99 as an emergency; operative 7–29–99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11–26–99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7–29–99 order, including amendment of section, transmitted to OAL 8–26–99 and filed 10–8–99 (Register 99, No. 41).
5. Amendment of third paragraph of subsection (d) filed 3–13–2000; operative 4–12–2000 (Register 2000, No. 11).
6. Amendment of section and NOTE filed 6–26–2000; operative 6–26–2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
7. Amendment of subsection (c) and penultimate paragraph filed 7–17–2000 as an emergency; operative 7–17–2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11–14–2000 or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 7–17–2000 order transmitted to OAL 11–9–2000 and filed 12–27–2000 (Register 2000, No. 52).
9. Amendment filed 1–2–2001 as an emergency; operative 1–2–2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5–2–2001 or emergency language will be repealed by operation of law on the following day.
10. Certificate of Compliance as to 1–2–2001 order transmitted to OAL 5–1–2001 and filed 6–13–2001 (Register 2001, No. 24).
11. Amendment of subsection (c), new subsections (c)(1)–(4) and amendment of antepenultimate and penultimate paragraphs filed 9–9–2002; operative 9–9–2002 pursuant to Government Code section 11343.4 (Register 2002, No. 37).
12. Amendment of subsection (a), penultimate paragraph and NOTE filed 11–4–2002 as an emergency; operative 11–4–2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11–4–2003 or emergency language will be repealed by operation of law on the following day.
13. Amendment of subsections (c) and (c)(3) filed 5–1–2003 as an emergency; operative 5–1–2003 (Register 2003, No. 18). A Certificate of Compliance must be transmitted to OAL by 8–29–2003 or emergency language will be repealed by operation of law on the following day.
14. Amendment of subsections (c) and (c)(3) refiled 8–29–2003 as an emergency; operative 8–29–2003 (Register 2003, No. 35). A Certificate of Compliance must be transmitted to OAL by 12–29–2003 or emergency language will be repealed by operation of law on the following day.
15. Certificate of Compliance as to 11–4–2002 order transmitted to OAL 11–4–2003 and filed 12–19–2003 (Register 2003, No. 51).
16. Amendment of subsections (c) and (c)(3) refiled 12–22–2003 as an emergency; operative 12–22–2003 (Register 2003, No. 52). A Certificate of Compliance must be transmitted to OAL by 4–20–2004 or emergency language will be repealed by operation of law on the following day.
17. Certificate of Compliance as to 12–22–2003 order transmitted to OAL 4–19–2004 and filed 5–25–2004 (Register 2004, No. 22).
18. Amendment of subsections (b)(1)–(4) and new subsection (b)(5) filed 11–2–2004; operative 11–2–2004 pursuant to Government Code section 11343.4 (Register 2004, No. 45).

§ 1859.105.1. Program Accountability Environmental Hardship.

(a) When the district has received funds pursuant to Section 1859.75.1, the Board shall conduct a review to assure the district has made progress towards acquisition of the site pursuant to Education Code Section 17072.13(c)(2). The review shall consist of an analysis of the district's progress report in accordance with Section 1859.104(c). Acceptable evidence of substantial progress shall be when the district has completed all of the following:

(1) Obtained the final appraisal of the site.

(2) Completed all California Environmental Quality Act requirements.

(3) Obtained final approval of the site by the CDE.

(4) Provided final escrow instructions or evidence the district has filed condemnation proceedings and intends to request an order of possession of the site.

After the Board has received the progress report required in Section 1859.104(c) a review and analysis of the report by the OPSC will be made for compliance with this Section within 60 days of the submittal of the report by the district. The OPSC must notify the district within 60 days of the submittal of the report if it intends to recommend to the Board that the district has not made progress towards acquiring the site. If the OPSC does not respond to the district within 60 days of submittal of the report, the OPSC concurs with the district that it has made progress to the site acquisition.

Should the OPSC respond within 60 days of submittal of the progress report by the district that no progress has been made towards site acquisition or the district fails to submit the progress report within the timelines in Section 1859.104(c), the OPSC will recommend at the next available Board meeting that the site apportionment for the project be rescinded and that any interest earned on State funds be returned to the State. If the apportionment is rescinded as a result of a finding by the Board that no progress has been made towards acquiring the site, the pupils assigned to the project will be added to the district's baseline eligibility.

(b) The district may request one–year extensions of the site apportionment as authorized by Education Code Section 17072.13(c)(2). Acceptable criteria for approval of an extension are any of the following:

(1) The district has received letters from the DTSC and the CDE that indicate the agency concurs that the district is making reasonable progress towards acquisition of the site.

(2) Other reasonable evidence of effort the district has made towards acquiring the site as approved by the Board.

NOTE: Authority cited: Sections 17070.35 and 17072.13, Education Code. Reference: Sections 17070.35, 17072.13 and 17076.10, Education Code.

HISTORY

1. New section filed 6–26–2000; operative 6–26–2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).

§ 1859.105.2. Program Accountability for District–Owned Site Acquisition Cost.

When the district has received funds pursuant to Section 1859.74.5 for a district–owned site and has not submitted the certification required pursuant to Section 1859.104(d), the site apportionment is subject to the provisions of material inaccuracy as prescribed in Education Code Section 17070.51.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.51 and 17072.12, Education Code.

HISTORY

1. New section filed 2–6–2003; operative 2–6–2003 pursuant to Government Code section 11343.4 (Register 2003, No. 6).

§ 1859.106. Program Accountability Expenditure Audit.

The projects will be audited to assure that the expenditures incurred by the district were made in accordance with the provisions of Education Code Section 17072.35 for new construction projects, Section 1859.120 for Joint–Use Projects, Section 1859.140 for Critically Overcrowded School projects, Section 1859.160 for Charter School projects, and Education Code Section 17074.25 and Section 1859.79.2 for modernization projects. The audit will also assure that the district complied with all site acquisition guidelines as provided in Education Code Sections 17072.13 and 17072.14 and Sections 1859.74, 1859.74.1, 1859.74.2, 1859.74.3, 1859.74.4, 1859.75 and 1859.75.1.

An adjustment in the SFP grant will be made for the following:

(a) The difference in the value of the site, relocation costs, DTSC fees, and hazardous waste/materials removal costs that were used to determine the New Construction Additional Grant and the actual amount paid by the district for the site, relocation costs, DTSC fees, and hazardous waste/materials removal costs. For applications received on or after January 1, 2004, the adjustment may be made regardless of whether the hazardous waste/materials removal costs were requested on the application for funding.

(b) For 50 percent of any insurance proceeds collectable by the district for displaced facilities and 50 percent of the net proceeds available from the disposition of displaced facilities pursuant to Section 1859.82(a) or (b).

When the OPSC receives the final expenditure report from the district on Form SAB 50–06, an audit of the expenditures by the OPSC shall commence within two years of the report. If the district is not notified by the OPSC within the two–year period that an audit will be made, there will be no audit of the project by the OPSC and the expenditures reported by the district shall be deemed appropriate. If the district has been notified that an audit of the expenditures will be made by the OPSC, the OPSC shall complete the audit within six months of the notification, un-

[The next page is 234.36(m).]

less additional information requested from the district has not been received.

Districts shall be required to maintain all appropriate records that support all district certifications and expenditures for all costs associated with SFP, Charter School, and Joint–Use projects for a period of not less than four years from the date the notice of completion is filed for the project in order to allow other agencies, including, without limitation, the Bureau of State Audits and the State Controller to perform their audit responsibilities.

The district is responsible to substantiate expenditures from the Joint–Use Partner(s) financial contribution pursuant to Section 1859.127 and from other local sources.

Should the OPSC conduct an audit of the district certifications or the expenditures for the project and make a finding that some or all of the expenditures were not made in accordance with the provisions of Education Code Section 17072.35 for new construction projects, Section 1859.120 for Joint–Use Projects, Section 1859.140 for Critically Overcrowded School projects, Section 1859.160 for Charter School projects, Education Code Section 17074.25 and Section 1859.79.2 for modernization projects, and Education Code Sections 17072.13 and 17072.14 for projects with additional costs imposed by the DTSC, the OPSC shall recommend to the Board that the apportionment be adjusted based on the audit findings.

Should the CDE make a finding that a project did not meet the standards that were adopted by the CDE pursuant to Education Code Section 17251(b) and (c) when the district had self–certified that the project met those standards pursuant to Education Code Section 17070.50(b), the Board may request that the CDE make a recommendation that the apportionment for the project be adjusted based on the CDE finding. Any adjustment in the apportionment shall be based on the percentage of space in the project that the CDE determined did not meet those standards.

If title to special education program facilities is transferred between a school district and a county office of education pursuant to Education Code Sections 17071.75(b)(2) and (f), the receiving School District shall remit payment to the State within 60 days or up to five years, pursuant to an approved repayment schedule, as requested by the School District. If a repayment schedule is requested, it shall be in equal installments and shall include interest at the same rate as that earned on the State's Pooled Money Investment Account on the date a repayment schedule is approved by the Board. The repayment amount shall be determined by prorating the Financial Hardship assistance received on the initial Apportionment for the transferred facilities, including site acquisition costs apportioned for any land transferred, by the percentage of building area being transferred divided by the total amount of building area approved on the initial Application containing the transfer of facilities, if all of the following conditions are met:

(a) The transferred facilities were constructed with State funds under Chapter 12.5.

(b) Transfer of the facilities took place within ten years of initial occupancy.

(c) The School District that initially acquired or constructed the transferred facilities had approved Financial Hardship status at the time of Apportionment of the project.

(d) The School District receiving the facility did not have approved Financial Hardship status at either the time of the title transfer or the time that the adjustment request is submitted to the OPSC.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35, 17070.50, 17071.75, 17072.13, 17072.14, 17072.18, 17072.35, 17074.25, 17076.10, 17077.40, 17078.52 and 17251, Education Code.

HISTORY

1. New section filed 12–3–98 as an emergency; operative 12–3–98 (Register 98, No. 49). A Certificate of Compliance must be transmitted to OAL by 4–2–99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3–31–99 as an emergency; operative 3–31–99 (Register 99, No. 14). A Certificate of Compliance must be transmitted to OAL by 7–29–99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7–29–99 as an emergency; operative 7–29–99 (Register 99, No. 31). A Certificate of Compliance must be transmitted to OAL by 11–26–99 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7–29–99 order, including amendment of section and NOTE, transmitted to OAL 8–26–99 and filed 10–8–99 (Register 99, No. 41).
5. Amendment of third paragraph filed 3–13–2000; operative 4–12–2000 (Register 2000, No. 11).
6. Amendment filed 6–26–2000; operative 6–26–2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 26).
7. Amendment of section and NOTE filed 4–10–2002; operative 4–10–2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).
8. Amendment of section and NOTE filed 11–4–2002 as an emergency; operative 11–4–2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11–4–2003 or emergency language will be repealed by operation of law on the following day.
9. Amendment of section and NOTE filed 2–13–2003 as an emergency pursuant to Education Code section 17078.64(b); operative 2–13–2003 (Register 2003, No. 7). A Certificate of Compliance must be transmitted to OAL by 6–13–2003 or emergency language will be repealed by operation of law on the following day.
10. Amendment of first paragraph and penultimate paragraph filed 5–1–2003 as an emergency; operative 5–1–2003 (Register 2003, No. 18). A Certificate of Compliance must be transmitted to OAL by 8–29–2003 or emergency language will be repealed by operation of law on the following day.
11. Amendment of section and NOTE refiled 6–13–2003 as an emergency; operative 6–13–2003 (Register 2003, No. 24). A Certificate of Compliance must be transmitted to OAL by 10–13–2003 or emergency language will be repealed by operation of law on the following day.
12. Amendment of first paragraph and penultimate paragraph refiled 8–29–2003 as an emergency; operative 8–29–2003 (Register 2003, No. 35). A Certificate of Compliance must be transmitted to OAL by 12–29–2003 or emergency language will be repealed by operation of law on the following day.
13. Amendment of section and NOTE refiled 10–9–2003 as an emergency; operative 10–9–2003 (Register 2003, No. 41). A Certificate of Compliance must be transmitted to OAL by 2–6–2004 or emergency language will be repealed by operation of law on the following day.
14. Certificate of Compliance as to 11–4–2002 order transmitted to OAL 11–4–2003 and filed 12–19–2003 (Register 2003, No. 51).
15. Amendment of first paragraph and subsection (c) refiled 12–22–2003 as an emergency; operative 12–22–2003 (Register 2003, No. 52). A Certificate of Compliance must be transmitted to OAL by 4–20–2004 or emergency language will be repealed by operation of law on the following day.
16. Certificate of Compliance as to 10–9–2003 order transmitted to OAL 2–6–2004 and filed 3–23–2004 (Register 2004, No. 13).
17. Certificate of Compliance as to 12–22–2003 order transmitted to OAL 4–19–2004 and filed 5–25–2004 (Register 2004, No. 22).
18. Amendment of section and NOTE filed 2–3–2005; operative 2–3–2005 pursuant to Government Code section 11343.4 (Register 2005, No. 5).
19. Amendment of last two paragraphs of subsection (b) filed 1–8–2007 as an emergency; operative 1–8–2007 (Register 2007, No. 2). A Certificate of Compliance must be transmitted to OAL by 5–8–2007 or emergency language will be repealed by operation of law on the following day.
20. Certificate of Compliance as to 1–8–2007 order transmitted to OAL 5–8–2007 and filed 6–20–2007 (Register 2007, No. 25).
21. Amendment filed 1–7–2008; operative 2–6–2008 (Register 2008, No. 2).

§ 1859.106.1. Repayment of State Funds.

Upon adoption of the audit findings by the Board and in lieu of the collection procedures outlined in Education Code Section 17076.10(c)(1), a school district, county office of education, or charter school may request a repayment schedule of up to five years, in equal annual installments, if the total repayment of State funds within 60 days of the Board action would cause the school district, county office of education, or charter school to fall into fiscal distress. School districts, county offices of education, or charter schools requesting a repayment schedule must be in a severe hardship condition as evidenced by at least one of the following criteria:

(a) For a school district or county office of education, the district or county office of education is listed on the current CDE List of Negative and Qualified Certifications of School Districts and County Offices of Education.

(b) For a school district or county office of education, the amount due to the State for one or more projects would cause the district or county office of education to be listed on the CDE List of Negative and Qualified Certifications of School Districts and County Offices of Education report. Where the financial condition of a school district is involved, the county office of education must submit a letter to the OPSC on behalf of its representative school districts for consideration substantiating that the

repayment will place the district on the CDE List of Negative and Qualified Certifications of School Districts and County Offices of Education. Where the financial condition of a county office of education is involved, the CDE must submit a letter to the OPSC on behalf of the county office of education for consideration substantiating that the repayment will place the county office of education on the CDE List of Negative and Qualified Certifications of School Districts and County Offices of Education.

(c) For a charter school, the amount due to the State for one or more projects would cause the charter school severe financial hardship. The charter school's authorizing agency must submit a letter to the OPSC on behalf of the charter school for consideration substantiating that the repayment may result in the charter school being unable to meet its financial obligations for the current or subsequent two fiscal years.

The repayment schedule shall include interest at the same rate as that earned on the State's Pooled Money Investment Account on the date a repayment schedule is approved by the Board.

The repayment schedule will commence on July 1 of the fiscal year following the repayment schedule approval date.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35, 17076.10(c) and 17078.52, Education Code.

HISTORY

1. New section filed 1–8–2007 as an emergency; operative 1–8–2007 (Register 2007, No. 2). A Certificate of Compliance must be transmitted to OAL by 5–8–2007 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 1–8–2007 order, including amendment of section and NOTE, transmitted to OAL 5–8–2007 and filed 6–20–2007 (Register 2007, No. 25).

§ 1859.107. Amending and Withdrawal of Applications.

A funding application that received an apportionment under Chapter 12 or Chapter 12.5 may not be rescinded and re–approved under the provisions of any amended law or administrative regulation unless specifically authorized by other applicable law.

A funding application, with the exception of funding applications identified in Subsection (a) below, that has received an approval pursuant to Section 1859.95, but has not received an apportionment, may receive an adjustment as allowed under Sections 1859.71, 1859.71.2(c), 1859.78.4(b) or 1859.78 at the time the apportionment is made. If the adjustment is a result of Sections 1859.71.2(c) or 1859.78.4(b), the district must submit an amended Form SAB 50–04. The amended application shall retain its OPSC processing date. No other adjustments may be made, including those resulting from changes to the regulations prior to final funding by the SAB. As an alternative, the application may be withdrawn and resubmitted for SAB approval under the provisions of any amended or new regulation that becomes effective prior to the apportionment for the project. The district must first request from the OPSC that the application be withdrawn and removed from the Unfunded List. The district may then resubmit the application to the OPSC under the provisions of the amended or new regulation once it is effective. The resubmitted application will receive a new processing date by the OPSC. School districts that have already received a site apportionment under Section 1859.81.1(a) may withdraw the application and file as an environmental hardship pursuant to Section 1859.75.1 without forfeiting their original site apportionment, provided that the new application does not exceed the amount already apportioned.

A funding application, with the exception of funding applications identified in Subsection (a) below, submitted to the OPSC that has not received an approval will receive funding under the provisions of the regulations that were in effect when the application was submitted to the OPSC and any funding adjustment authorized by Sections 1859.71.2(c) or 1859.78.4(b). If the funding adjustment is a result of Sections 1859.71.2(c) or 1859.78.4(b), the district must submit an amended Form SAB 50–04. The amended application shall retain its OPSC processing date. At the option of the district, a funding application submitted to the OPSC that has not received an approval may be withdrawn and resubmitted for SAB approval under the provisions of any amended or new regulation once it is effective. The district must request that the application be withdrawn and removed from the OPSC workload list. The resubmitted application will receive a new processing date by the OPSC.

(a) A district that submitted an Approved Application request for either a Modernization Adjusted Grant or a Separate Design Apportionment for a modernization project pursuant to Section 1859.81.1 that meets the criteria in (1) and (2) below must submit a new Form SAB 50–04, that meets the criteria in Subsections (b) or (c) no later then 60 calendar days after the effective date (September 16, 2002) of this Subsection:

(1) The Approved Application was received by the OPSC after April 29, 2002 but no later than the date this Subsection becomes effective (September 16, 2002).

(2) The Approved Application has not received an approval or has received an approval pursuant to Section 1859.95, but has not received an apportionment.

(b) The new Form SAB 50–04 identifies the same number of pupils assigned to the original project or a lesser amount that is not less than 37.5 percent of the pupils originally assigned to the project (round up). In this case, the district will be required to contribute additional funds to the project to meet the 40 percent district contribution required pursuant to Section 1859.79(b). If the project was approved as a financial hardship project under the provisions of Section 1859.81, the project shall maintain its financial hardship status, however, the district will be subject to a financial review pursuant to Section 1859.81(a) to determine if there are additional district funds available for the project.

(c) The new Form SAB 50–04 identifies a lesser number of pupils assigned to the project that does not exceed an amount determined by multiplying the pupils assigned to the original project by 37.5 percent (round down). In this case, the district will not be required to contribute additional funds to the project to meet the 40 percent district contribution required pursuant to Section 1859.79(b).

(d) If a new Form SAB 50–04 is submitted under the provisions of subsection (b), the Architect of Record or Design Professional certification made on the original Form SAB 50–04 will be accepted as satisfying the requirements of the new Form SAB 50–04.

(e) Any Approved Application request that meets the requirements of Subsection (a) will be withdrawn 60 calendar days after the date Subsection (a) becomes effective (September 16, 2002), if the district does not submit a new Form SAB 50–04 conforming to either Subsections (b) or (c).

Any application for eligibility determination that has received an approval may be amended to comply with provisions of an amended or new regulation once it is effective. The amended application will receive a new processing date by the OPSC.

Any application for eligibility determination that has not received an approval may be amended at any time to conform to an amended or new regulation. The application shall retain its OPSC processing date.

Any application for new construction eligibility determination that has received an approval must be amended to conform to Regulation Section 1859.51(*l*) prior to submittal of Form SAB 50–04.

Any application for new construction eligibility determination that has not received an approval must be amended to conform to Form SAB 50–02 and Form SAB 50–03 prior to submittal of Form SAB 50–04.

Any application for modernization eligibility determination that has received an approval must be amended to conform to Regulation Section 1859.61(g) prior to submittal of an Form SAB 50–04.

Any application for modernization eligibility determination that has not received an approval must be amended to conform to Form SAB 50–03 prior to submittal of an Form SAB 50–04.

Districts that have received an approval of eligibility on a HSAA or Super HSAA are not required to re–establish eligibility under the provisions of Section 1859.41(a).

Districts that have requested eligibility determination on a HSAA or Super HSAA that have not received an approval must comply with the provisions of Section 1859.41(a) prior to submittal of Form SAB 50–04. The amended eligibility application shall retain its original OPSC processing date.

A district that has received an approval of its eligibility determination on a district-wide, HSAA or Super HSAA basis, but received no New Construction Grant(s), may re-file on another eligibility determination basis provided it withdraws all previously submitted Form SAB 50-04 requests for New Construction Grant(s), including those on the Unfunded List.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17070.35, 17070.63, 17074.15, 17074.16 and 17074.56, Education Code.

HISTORY

1. New section filed 3-13-2000; operative 4-12-2000 (Register 2000, No. 11).
2. Amendment adding four paragraphs at end filed 7-17-2000 as an emergency; operative 7-17-2000 (Register 2000, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-14-2000 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 7-17-2000 order transmitted to OAL 11-9-2000 and filed 12-27-2000 (Register 2000, No. 52).
4. Amendment filed 1-2-2001 as an emergency; operative 1-2-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-2-2001 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1-2-2001 order transmitted to OAL 5-1-2001 and filed 6-13-2001 (Register 2001, No. 24).
6. Amendment of last four paragraphs filed 7-25-2001; operative 7-25-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 30).
7. Amendment of last four paragraphs filed 8-13-2001; operative 8-13-2001 pursuant to Government Code section 11343.4 (Register 2001, No. 33).
8. Amendment filed 4-10-2002; operative 4-10-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 15).
9. Amendment filed 5-2-2002; operative 6-1-2002 (Register 2002, No. 18).
10. Amendment of section and NOTE filed 8-12-2002 as an emergency; operative 8-12-2002 (Register 2002, No. 33). A Certificate of Compliance must be transmitted to OAL by 12-10-2002 or emergency language will be repealed by operation of law on the following day.
11. Amendment of second paragraph filed 9-9-2002; operative 9-9-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 37).
12. Amendment of section and NOTE filed 9-16-2002 as an emergency; operative 9-16-2002 (Register 2002, No. 38). A Certificate of Compliance must be transmitted to OAL by 1-14-2003 or emergency language will be repealed by operation of law on the following day.
13. Amendment filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.
14. Certificate of Compliance as to 8-12-2002 order transmitted to OAL 12-3-2002 and filed 1-16-2003 (Register 2003, No. 3).
15. Certificate of Compliance as to 9-16-2002 order transmitted to OAL 1-7-2003 and filed 2-19-2003 (Register 2003, No. 8).
16. Amendment of subsection (a)(1) filed 2-27-2003 as an emergency; operative 2-27-2003 (Register 2003, No. 9). A Certificate of Compliance must be transmitted to OAL by 6-27-2003 or emergency language will be repealed by operation of law on the following day.
17. Amendment of subsection (a)(1) refiled 6-19-2003 as an emergency; operative 6-19-2003 (Register 2003, No. 25). A Certificate of Compliance must be transmitted to OAL by 10-17-2003 or emergency language will be repealed by operation of law on the following day.
18. Amendment of subsection (a)(1) refiled 10-10-2003 as an emergency; operative 10-10-2003 (Register 2003, No. 41). A Certificate of Compliance must be transmitted to OAL by 2-9-2004 or emergency language will be repealed by operation of law on the following day.
19. Certificate of Compliance as to 11-4-2002 order transmitted to OAL 11-4-2003 and filed 12-19-2003 (Register 2003, No. 51).
20. Certificate of Compliance as to 10-10-2003 order transmitted to OAL 2-9-2004 and filed 3-23-2004 (Register 2004, No. 13).

§ 1859.108. Extension of Fire Code Requirements Exemption.

A portable building that has received a three-year exemption by the Division of the State Architect from the fire code requirements described in Education Code Sections 17074.50 and 17074.52 may receive up to an additional three-year extension of that exemption provided all the following criteria are met:

(a) The portable was acquired or leased with SFP modernization funds.

(b) The portable was used solely for interim housing during the construction of a SFP modernization project.

(c) The portable building meets the definition outlined in Subdivision (c) of Education Code Section 17074.54.

(d) The district has presented acceptable evidence to the Board that the portable building continues to be needed to house pupils as a result of the SFP modernization project.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17074.54, Education Code.

HISTORY

1. New section filed 8-12-2002 as an emergency; operative 8-12-2002 (Register 2002, No. 33). A Certificate of Compliance must be transmitted to OAL by 12-10-2002 or emergency language will be repealed by operation of law on the following day.

[The next page is 234.36(o).]

2. Certificate of Compliance as to 8–12–2002 order transmitted to OAL 12–3–2002 and filed 1–16–2003 (Register 2003, No. 3).

Article 12. Joint–Use Project Grant Determination

§ 1859.120. General (Joint–Use Project Funding).

A district seeking Joint–Use Project funding pursuant to the provisions of Education Code Section 17077.40, shall complete and file Form SAB 50–07.

If the Joint–Use Project will serve more than one grade configuration or the Joint–Use Project will serve multiple public school sites, the Joint–Use Project eligibility and funding will be determined based on the highest grade level served by the facility.

NOTE: Authority cited: Sections 17070.35 and 17075.15, Education Code. Reference: Section 17077.40, Education Code.

HISTORY

1. New article 12 (sections 1859.120–1859.130) and section filed 11–4–2002 as an emergency; operative 11–4–2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11–4–2003 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 11–4–2002 order transmitted to OAL 11–4–2003 and filed 12–19–2003 (Register 2003, No. 51).
3. Amendment adding second paragraph filed 5–21–2004 as an emergency; operative 5–21–2004 (Register 2004, No. 21). A Certificate of Compliance must be transmitted to OAL by 9–20–2004 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 5–21–2004 order transmitted to OAL 9–20–2004 and filed 11–2–2004 (Register 2004, No. 45).

§ 1859.121. Joint–Use Project Application Submittals and Apportionments.

The Board shall accept Approved Applications for Joint–Use Funding on a yearly basis as follows:

(a) For any funding made available for this purpose by May 31, 2003, applications will be accepted from November 5, 2002 through May 31, 2003. The Board will apportion the funding made available by May 31, 2003 at the July 2003 Board meeting.

(b) For any additional funding that is made available for this purpose beginning June 1, 2003 and thereafter, the Board will accept applications from June 1 of the prior calendar year through May 31 of the current calendar year for any funding made available for this purpose by May 31 of each year. The Board will apportion the funding made available by May 31 of each year at the following July Board meeting based on the SFP regulations in effect at that time.

NOTE: Authority cited: Sections 17070.35 and 17075.15, Education Code. Reference: Sections 17077.40, 17077.42 and 17077.45, Education Code.

HISTORY

1. New section filed 11–4–2002 as an emergency; operative 11–4–2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11–4–2003 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 11–4–2002 order transmitted to OAL 11–4–2003 and filed 12–19–2003 (Register 2003, No. 51).
3. Amendment of second paragraph filed 5–21–2004 as an emergency; operative 5–21–2004 (Register 2004, No. 21). A Certificate of Compliance must be transmitted to OAL by 9–20–2004 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 5–21–2004 order transmitted to OAL 9–20–2004 and filed 11–2–2004 (Register 2004, No. 45).

§ 1859.122. Type I Joint–Use Program Eligibility Criteria.

A district requesting funding for a Type I Joint–Use Project may submit Form SAB 50–07 to the OPSC if all the following criteria are met:

(a) The plans and specifications for the Type I Joint–Use Project are included in the plans and specifications for a new school or an addition to an existing public school for which the district has requested SFP new construction funding.

(b) The Type I Joint–Use Project will be located on the same site where the SFP new construction project is located.

(c) The Type I Joint–Use Project will increase the square footage and/or Extra Cost for any of the following proposed facilities included in the SFP new construction project:

(1) A multipurpose room.
(2) A gymnasium.
(3) A Childcare facility.
(4) A library.
(5) A Teacher Education facility.

(d) At least one of the Joint–Use Partner(s) is an institution of Higher Education, a governmental agency, or a non–profit organization. The Joint–Use Partner(s) may be a county office of education or another district provided the funds contributed by those agencies pursuant to Section 1859.127 are not otherwise available for other SFP projects.

(e) The district has entered into a Joint–Use Agreement that meets the criteria in Education Code Section 17077.42.

(f) The district has joint–use square footage eligibility pursuant to Section 1859.124(a) or has demonstrated that it will incur Extra Cost pursuant to Section 1859.125.1.

(g) The construction contract for the Type I Joint–Use Project was not executed prior to April 29, 2002.

(h) The plans and specifications for the Type I Joint–Use Project have been approved by the DSA.

(i) The plans for the Type I Joint–Use project have been approved by the CDE.

NOTE: Authority cited: Sections 17070.35 and 17075.15, Education Code. Reference: Sections 17077.40, 17077.42 and 17077.45, Education Code.

HISTORY

1. New section filed 11–4–2002 as an emergency; operative 11–4–2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11–4–2003 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 11–4–2002 order transmitted to OAL 11–4–2003 and filed 12–19–2003 (Register 2003, No. 51).
3. Amendment of subsections (c)–(c)(3), new subsections (c)(4)–(5) and amendment of subsections (d) and (f) filed 5–21–2004 as an emergency; operative 5–21–2004 (Register 2004, No. 21). A Certificate of Compliance must be transmitted to OAL by 9–20–2004 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 5–21–2004 order transmitted to OAL 9–20–2004 and filed 11–2–2004 (Register 2004, No. 45).
5. Amendment of subsection (d) filed 5–24–2005 as an emergency; operative 5–24–2005 (Register 2005, No. 21). A Certificate of Compliance must be transmitted to OAL by 9–21–2005 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 5–24–2005 order transmitted to OAL 9–16–2005 and filed 10–24–2005 (Register 2005, No. 43).

§ 1859.122.1. Type II Joint–Use Program Eligibility Criteria.

A district requesting funding for a Type II Joint–Use Project may submit Form SAB 50–07 to the OPSC if the following criteria are met:

(a) If the Joint–Use Project proposes to Reconfigure an existing school building, then the plans and specifications for the Type II Joint–Use Project may be included in the plans and specifications for modernization to an existing public school for which the district has requested SFP modernization funding. If the Joint–Use Project will be part of a qualifying SFP Modernization project, then the Type II Joint–Use Project will be located on the same site where the SFP modernization project is located and the site does not have the type of facility for which the Joint–Use Funding is requested or the facility is Inadequate.

(b) If the Joint–Use Project proposes to construct new school buildings, then the project will be located on an existing school site that does not have the type of facility for which the Joint–Use Funding is requested or the facility is Inadequate.

(c) The Type II Joint–Use Project will either Reconfigure an existing school building or construct new school buildings, and will provide facilities to be used for any of the following:

(1) A multipurpose room.
(2) A gymnasium.
(3) A childcare facility.
(4) A library.
(5) A Teacher Education facility.

(d) At least one of the Joint–Use Partner(s) is a governmental agency, an institution of Higher Education or a Non–Profit Organization. The Joint–Use Partner(s) may be a county office of education or another district provided the funds contributed by those agencies pursuant to Section 1859.127 are not otherwise available for other SFP projects.

(e) The district has entered into a Joint–Use Agreement that meets the criteria in Education Code Section 17077.42.

(f) The district has demonstrated it has joint–use square footage eligibility pursuant to Section 1859.124(b).

(g) The construction contract for the Type II Joint–Use Project was not executed prior to April 29, 2002.

(h) The plans and specifications for the Type II Joint–Use Project, to reconfigure existing school buildings as part of a qualifying SFP project, have been approved by the DSA and the CDE.

(i) The Preliminary Plans for the Type II Joint–Use Project, to either reconfigure existing school buildings, construct new school buildings, or both, have been approved by the CDE.

Reconfiguring an existing school building must not reduce the district's capacity or displace another minimum essential facility. In any case involving the replacement of capacity or a minimum essential facility due to the reconfiguration of an existing building, the replacement must be part of the plans submitted in support of the Joint–Use Application, must occur concurrently, and cannot be part of a SFP Application for new construction.

NOTE: Authority cited: Sections 17070.35 and 17075.15, Education Code. Reference: Sections 17077.40, 17077.42 and 17077.45, Education Code.

HISTORY

1. New section filed 11–4–2002 as an emergency; operative 11–4–2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11–4–2003 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 11–4–2002 order transmitted to OAL 11–4–2003 and filed 12–19–2003 (Register 2003, No. 51).
3. Amendment filed 5–21–2004 as an emergency; operative 5–21–2004 (Register 2004, No. 21). A Certificate of Compliance must be transmitted to OAL by 9–20–2004 or emergency language will be repealed by operation of law on the following day.
4. Editorial correction of first paragraph (Register 2004, No. 45).
5. Certificate of Compliance as to 5–21–2004 order transmitted to OAL 9–20–2004 and filed 11–2–2004 (Register 2004, No. 45).

§ 1859.122.2. Additional Type II Joint–Use Program Eligibility Criteria for Pupil Academic Achievement.

A district requesting funding for a Type II Joint–Use Project that will Reconfigure existing school buildings, construct new school buildings, or both to provide for pupil Academic Achievement may submit Form SAB 50–07 to the OPSC if the criteria in sections 1859.122.1(a), 1859.122.1(b), 1859.122.1(d), 1859.122.1(e), 1859.122.1(f), 1859.122.1(g), 1859.122.1(h), and 1859.122.1(i) are met and the plans and specifications were accepted by the DSA for review and approval prior to January 1, 2004.

Reconfiguring an existing school building must not reduce the district's capacity or displace another minimum essential facility. In any case involving the replacement of capacity or a minimum essential facility due to the reconfiguration of an existing building, the replacement must be part of the plans submitted in support of the Joint–Use Application, must occur concurrently, and cannot be part of a SFP Application for new construction.

NOTE: Authority cited: Sections 17070.35 and 17075.15, Education Code. Reference: Sections 17077.40, 17077.42 and 17077.45, Education Code.

HISTORY

1. New section filed 11–4–2002 as an emergency; operative 11–4–2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11–4–2003 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 11–4–2002 order transmitted to OAL 11–4–2003 and filed 12–19–2003 (Register 2003, No. 51).
3. Amendment of section heading and section filed 5–21–2004 as an emergency; operative 5–21–2004 (Register 2004, No. 21). A Certificate of Compliance must be transmitted to OAL by 9–20–2004 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 5–21–2004 order, including further amendment of first paragraph, transmitted to OAL 9–20–2004 and filed 11–2–2004 (Register 2004, No. 45).

§ 1859.123. Qualifying SFP New Construction Project.

For purposes of meeting the requirements in Section 1859.122(a), the district may combine the plans and specifications of its Joint–Use Project with any of the following new construction applications:

(a) A new construction funding request that is submitted at the same time as the Joint–Use Project application.

(b) An Approved Application for new construction funding that has not yet received an approval (i.e., not yet on the Unfunded List) if all the following criteria are met:

(1) The plans and specifications for the Joint–Use Project were not included in the original DSA approved plans and specifications for the Approved Application for new construction funding.

(2) The original DSA approved plans and specifications for the Approved Application for new construction funding are modified to incorporate the plans and specifications for the Joint–Use Project.

(3) The district has withdrawn the Approved Application for new construction funding pursuant to Section 1859.107 for the benefit of adding a Joint–Use Project.

(4) A revised new construction funding application and the Joint–Use Project application are resubmitted to the OPSC at the same time.

(c) An Approved Application for new construction funding that has been approved, but has not received a full apportionment (i.e., currently on the Unfunded List) or has been fully funded, if all the following criteria are met:

(1) The plans and specifications for the Joint–Use Project were included in the original DSA approved plans and specifications for the Approved Application for new construction funding.

(2) The contract for the construction of the Joint–Use Project was not executed prior to April 29, 2002.

(3) The district entered into a joint–use agreement that meets or will be amended to meet the criteria of Education Code Section 17077.42.

(4) The Joint–Use Project application is submitted separately. There is no requirement that the Approved Application for new construction be withdrawn from the Unfunded List.

NOTE: Authority cited: Sections 17070.35 and 17075.15, Education Code. Reference: Sections 17077.40, 17077.42 and 17077.45, Education Code.

HISTORY

1. New section filed 11–4–2002 as an emergency; operative 11–4–2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11–4–2003 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 11–4–2002 order transmitted to OAL 11–4–2003 and filed 12–19–2003 (Register 2003, No. 51).
3. Amendment of first paragraph and repealer of subsections (c)(3)(A)–(B) filed 5–21–2004 as an emergency; operative 5–21–2004 (Register 2004, No. 21). A Certificate of Compliance must be transmitted to OAL by 9–20–2004 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 5–21–2004 order, including further amendment of first paragraph and subsection (c)(3), transmitted to OAL 9–20–2004 and filed 11–2–2004 (Register 2004, No. 45).
5. Amendment of subsection (c)(3) filed 5–24–2005 as an emergency; operative 5–24–2005 (Register 2005, No. 21). A Certificate of Compliance must be transmitted to OAL by 9–21–2005 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 5–24–2005 order transmitted to OAL 9–16–2005 and filed 10–24–2005 (Register 2005, No. 43).

§ 1859.123.1. Qualifying SFP Modernization Project.

For purposes of meeting the requirements in Sections 1859.122.1(a) or 1859.122.2, the district may combine the plans and specifications of its Joint–Use Project with any of the following modernization applications:

(a) A modernization funding request that is submitted at the same time as the Joint–Use Project application.

(b) An Approved Application for modernization funding that has not yet received an approval (i.e., not yet on the Unfunded List) if all the following criteria are met:

(1) The plans and specifications for the Joint–Use Project were not included in the original DSA approved plans and specifications for the Approved Application for modernization funding.

(2) The original DSA approved plans and specifications for the Approved Application for modernization funding are modified to incorporate the plans and specifications for the Joint–Use Project.

(3) The district has withdrawn the Approved Application for modernization funding pursuant to Section 1859.107 for the benefit of adding a Joint–Use Project.

(4) A revised modernization funding application and the Joint–Use Project application are resubmitted to the OPSC at the same time.

(c) An Approved Application for modernization funding that has been approved, but has not received a full apportionment (i.e., currently on the Unfunded List) or has been fully funded, if all the following criteria are met:

(1) The plans and specifications for the Joint–Use Project were included in the original DSA approved plans and specifications for the Approved Application for modernization funding.

(2) The contract for the construction of the Joint–Use Project was not executed prior to April 29, 2002.

(3) The district entered into a joint–use agreement that meets or will be amended to meet the criteria of Education Code Section 17077.42.

(4) The Joint–Use Project application is submitted separately. There is no requirement that the Approved Application for modernization be withdrawn from the Unfunded List.

NOTE: Authority cited: Sections 17070.35 and 17075.15, Education Code. Reference: Sections 17077.40, 17077.42 and 17077.45, Education Code.

HISTORY

1. New section filed 5–21–2004 as an emergency; operative 5–21–2004 (Register 2004, No. 21). A Certificate of Compliance must be transmitted to OAL by 9–20–2004 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 5–21–2004 order, including further amendment of subsection (c)(3), transmitted to OAL 9–20–2004 and filed 11–2–2004 (Register 2004, No. 45).
3. Amendment of subsection (c)(3) filed 5–24–2005 as an emergency; operative 5–24–2005 (Register 2005, No. 21). A Certificate of Compliance must be transmitted to OAL by 9–21–2005 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 5–24–2005 order transmitted to OAL 9–16–2005 and filed 10–24–2005 (Register 2005, No. 43).

§ 1859.124. Joint–Use Project Square Footage Eligibility.

With the exception of funding requests for Extra Cost of a Type I Joint–Use Project, the district must have square footage eligibility in order to submit an application for Joint–Use Project funding. Depending on the type of Joint–Use Project, the square footage eligibility is calculated as follows:

(a) If the funding request is for a Type I Joint–Use Project, the square footage eligibility is calculated as follows:

(1) Determine the total square footage of the joint–use facility for which Joint–Use Project funding is requested.

(2) Determine the square footage for the type of joint–use facility for which Joint–Use Project funding is requested in the Square Footage Chart shown in Section 1859.124.1.

(3) Determine the square footage eligibility by subtracting the amount determined in (a)(2) from the amount determined in (a)(1). If a negative number results, the square footage eligibility is zero.

(b) If the funding request is for a Type II Joint–Use Project, the square footage eligibility is calculated as follows:

(1) Determine the total square footage of any existing like–kind joint–use facilities at the same site where the Joint–Use Project facility will be located.

(2) Determine the square footage for the type of joint–use facility for which Joint–Use Project funding is requested in the Square Footage Chart shown in Section 1859.124.1.

(3) Multiply the amount in (b)(2) by 60 percent.

(4) If the amount determined in (b)(1) is greater than the amount determined in (b)(3), the square footage eligibility is zero. If the amount determined in (b)(1) is equal to or less than the amount determined in (b)(3), the square footage eligibility is the amount determined in (b)(2).

NOTE: Authority cited: Sections 17070.35 and 17075.15, Education Code. Reference: Sections 17077.40, 17077.42 and 17077.45, Education Code.

HISTORY

1. New section filed 11–4–2002 as an emergency; operative 11–4–2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11–4–2003 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 11–4–2002 order transmitted to OAL 11–4–2003 and filed 12–19–2003 (Register 2003, No. 51).
3. Amendment filed 5–21–2004 as an emergency; operative 5–21–2004 (Register 2004, No. 21). A Certificate of Compliance must be transmitted to OAL by 9–20–2004 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 5–21–2004 order transmitted to OAL 9–20–2004 and filed 11–2–2004 (Register 2004, No. 45).

§ 1859.124.1. Square Footage Facility Chart.

Use the Chart below to determine square footage for purposes of Section 1859.124. The three columns to the left of the Chart indicate the facility types that may be funded under a Type I or Type II Joint–Use Project.

CHART OF SQUARE FOOTAGES
(In Square Feet)

Type I	*Type II*	*Facility Type*	*Elementary School K–6, K–8*	*Middle School 7–8 or 6–8 (on Separate Campus)*	*High School 7–12 or 9–12 (on Separate Campus)*
X	X	Multi–purpose Room (includes food service)	5.3 per pupil Minimum 4,000	5.3 per pupil Minimum 5,000	6.3 per pupil Minimum 8,200
X	X	Gymnasium (includes shower/locker)	12.9 per pupil* Minimum 6,828* Maximum 16,000*	12.9 per pupil Minimum 6,828 Maximum 16,000	15.3 per pupil Minimum 8,380 Maximum 18,000
X	X	Library	2.3 per pupil plus 600	3.3 per pupil plus 600	4.3 per pupil plus 600
X	X	Teacher Education**	39 per pupil or as approved by CDE		
	X	Pupil Academic Achievement***	39 per pupil or as approved by CDE		
X	X	Childcare	60 per child – Minimum 1,440		

*Available to K–6 schools only if there is no multipurpose room or the existing multipurpose room is inadequate on the campus and the Joint–Use Agreement includes gymnasium space rather than a multipurpose room.
** Subject to the CDE approval.
*** Subject to the CDE approval. Plans and specifications must be accepted by the DSA for review and approval prior to January 1, 2004.

(a) If the Joint Use Project requests funding for a multi-purpose room, gymnasium or library, multiply the amounts shown for the type of facility proposed in the Joint-Use Project by either (1) or (2) below:

(1) If the funding request is for a Type I Joint-Use Project, the sum of the latest CBEDS enrollment at the site and the number of pupil grants requested in the qualifying SFP New Construction project pursuant to Section 1859.123.

(2) If the funding is for a Type II Joint-Use Project, the latest CBEDS enrollment at the site.

(b) If the Joint Use Project requests funding for Teacher Education or Pupil Academic Achievement, multiply the amounts shown, or the amounts approved by the CDE, by the number of pupils that will receive specialized training for teacher education and/or academic achievement.

(c) If the Joint Use Project requests funding for a childcare facility, multiply the amounts shown by the number of children that will receive services.

NOTE: Authority cited: Sections 17070.35 and 17075.15, Education Code. Reference: Sections 17077.40, 17077.42 and 17077.45, Education Code.

HISTORY

1. New section filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 11-4-2002 order transmitted to OAL 11-4-2003 and filed 12-19-2003 (Register 2003, No. 51).
3. Amendment of first paragraph, table and subsections (a)(1)-(2) filed 5-21-2004 as an emergency; operative 5-21-2004 (Register 2004, No. 21). A Certificate of Compliance must be transmitted to OAL by 9-20-2004 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 5-21-2004 order transmitted to OAL 9-20-2004 and filed 11-2-2004 (Register 2004, No. 45).
5. Amendment of table filed 4-30-2007; operative 4-30-2007 pursuant to Government Code section 11343.4 (Register 2007, No. 18).

§ 1859.125. Joint-Use Project Grant Determination Based on Square Footage.

If the funding request is to construct square footage, the Joint-Use Grant is the lesser of the amount determined in (a) or (b):

(a) The sum of the amounts determined below:

(1) $173.30 for the Toilet Facilities in the Joint-Use Project as calculated in (a)(1)(B) below:

(A) Divide the eligible square footage of the Joint Use Project as determined in Section 1859.124 by the total square footage of the joint-use facility.

(B) Multiply the quotient determined in (a)(1)(A) by the Toilet Facilities in the joint-use facility.

(2) $96.30 for non-Toilet Facilities in the Joint-Use Project as calculated in (a)(2)(B) below.

(A) Divide the eligible square footage of the Joint Use Project as determined in Section 1859.124 by the total square footage of the joint-use facility.

(B) Multiply the quotient determined in (a)(2)(A) by the non-Toilet Facilities in the joint-use facility.

(3) 50 percent of site development work that meets the following criteria:

(A) It is necessary and applicable to the Joint-Use Project.

(B) It meets the requirements for service site development or utility costs as outlined in Section 1859.76(a) and/or (c). Off-site development work is not allowed as part of a Joint-Use Project; however, if off-site development work is necessary pursuant to Section 1859.76(b) for a Type I Joint-Use Project, the district may request the eligible off-site work under the qualifying SFP New Construction project pursuant to Section 1859.123.

(C) It is considered excessive site development costs and not eligible for funding under the qualifying SFP New Construction or Modernization project pursuant to Section 1859.123 or 1859.123.1.

(b) $1 million if the Joint-Use Project will be located on a school site that is or will be serving Elementary School Pupil(s). $1.5 million if the Joint-Use Project will be located on a school site that is or will be serving Middle School Pupil(s). $2 million if the Joint-Use Project will be located on a school site that is or will be serving High School Pupils.

If the district is requesting funding for site development work applicable to the Joint-Use Project, the district must submit a detailed cost estimate and appropriate DSA approved plans, with the Form SAB 50-07. The cost estimate must include appropriate justification documents that indicate the work is necessary to complete the Joint-Use Project and conform to the requirements of Section 1859.76.

Utility service(s) cost shall be prorated, if necessary, for any excess capacity not needed to service the Joint-Use Project.

The dollar amounts shown in (a) are adjusted in a manner prescribed in Section 1859.71 and are eligible for Excessive Cost Hardship Grant(s) pursuant to Section 1859.83(a), (b) and (d). The district may be eligible for the funding provided to initiate and enforce a LCP as prescribed in Section 1859.71.4.

The Joint-Use Grant amounts provided in this Section and Section 1859.125.1, if applicable, shall be deemed the full and final apportionment for the application. Any costs incurred by the district beyond the Joint-Use Grant amount and the Joint-Use Partner(s) and district financial contribution pursuant to Section 1859.127, shall be the responsibility of the district and/or the Joint-Use Partner(s).

NOTE: Authority cited: Sections 17070.35 and 17075.15, Education Code. Reference: Sections 17077.40, 17077.42 and 17077.45, Education Code.

HISTORY

1. New section filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.
2. Amendment of penultimate paragraph filed 8-25-2003 as an emergency; operative 8-25-2003 (Register 2003, No. 35). A Certificate of Compliance must be transmitted to OAL by 12-23-2003 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 11-4-2002 order transmitted to OAL 11-4-2003 and filed 12-19-2003 (Register 2003, No. 51).
4. Reinstatement of section as it existed prior to 8-25-2003 emergency amendment by operation of Government Code section 11346.1(f) (Register 2004, No. 9).
5. Amendment of subsections (a)(3)(B)-(C) and last paragraph filed 5-21-2004 as an emergency; operative 5-21-2004 (Register 2004, No. 21). A Certificate of Compliance must be transmitted to OAL by 9-20-2004 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 5-21-2004 order transmitted to OAL 9-20-2004 and filed 11-2-2004 (Register 2004, No. 45).
7. Amendment of penultimate paragraph filed 12-20-2004 as an emergency; operative 12-20-2004 (Register 2004, No. 52). A Certificate of Compliance must be transmitted to OAL by 4-19-2005 or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 12-20-2004 order transmitted to OAL 4-19-2005 and filed 5-12-2005 (Register 2005, No. 19).

§ 1859.125.1. Additional Type I Joint-Use Project Extra Cost Grant.

In addition to the square footage Joint-Use Grant provided in Section 1859.125, a Type I Joint-Use Project may receive funding for Extra Cost equal to the lesser of (a) or (b):

(a) An amount determined by subtracting (a)(2) from (a)(1):

(1) The sum of the following:

(A) 50 percent of the estimated cost to construct the Joint-Use Project.

(B) 50 percent of site development work that meets the following criteria:

1. It is necessary and applicable to the Joint-Use Project.

2. It meets the requirements of Section 1859.76(a) and/or (c).

3. It is considered excessive site development costs and not eligible for funding under the qualifying SFP New Construction project pursuant to Section 1859.123.

4. The district did not receive funding for the site development work under Section 1859.125.

(2) The sum of the following:

(A) $173.30 for the Toilet Facilities in the Joint-Use Project.

(B) $96.30 for the non-Toilet Facilities in the Joint-Use Project.

(b) An amount determined by subtracting (b)(2) from (b)(1):

(1) $1 million if the Joint-Use Project will be located on a school site that is or will be serving Elementary School Pupil(s). $1.5 million if the Joint-Use Project will be located on a school site that is or will be serving

Middle School Pupil(s). $2 million if the Joint–Use Project will be located on a school site that is or will be serving High School Pupils.

(2) The Joint–Use Grant amount determined in Section 1859.125 based on square footage, if applicable.

If the district is requesting funding for site development work applicable to the Joint–Use Project, the district must submit a detailed cost estimate and appropriate DSA approved plans with the Form SAB 50–07. The cost estimate must include appropriate justification documents that indicate the work is necessary to complete the Joint–Use Project and conform to the requirements in Section 1859.76.

Utility service(s) cost shall be prorated, if necessary, for any excess capacity not needed to service the Joint–Use Project.

The amounts shown in (a) are adjusted in a manner prescribed in Section 1859.71. The district may be eligible for the funding provided to initiate and enforce a LCP as prescribed in Section 1859.71.4.

The Joint–Use Grant amount provided in this Section and Section 1859.125, if applicable, shall be deemed the full and final apportionment for the application. Any costs incurred by the district beyond the Joint–Use Grant amount and the Joint–Use Partner(s) and district financial contribution pursuant to Section 1859.127, shall be the responsibility of the district and/or the Joint–Use Partner(s).

NOTE: Authority cited: Sections 17070.35 and 17075.15, Education Code. Reference: Sections 17077.40, 17077.42 and 17077.45, Education Code.

HISTORY

1. New section filed 11–4–2002 as an emergency; operative 11–4–2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11–4–2003 or emergency language will be repealed by operation of law on the following day.
2. Amendment of penultimate paragraph filed 8–25–2003 as an emergency; operative 8–25–2003 (Register 2003, No. 35). A Certificate of Compliance must be transmitted to OAL by 12–23–2003 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 11–4–2002 order transmitted to OAL 11–4–2003 and filed 12–19–2003 (Register 2003, No. 51).
4. Reinstatement of section as it existed prior to 8–25–2003 emergency amendment by operation of Government Code section 11346.1(f) (Register 2004, No. 9).
5. Amendment of section heading, first paragraph, subsection (a)(1)(B)3. and last paragraph filed 5–21–2004 as an emergency; operative 5–21–2004 (Register 2004, No. 21). A Certificate of Compliance must be transmitted to OAL by 9–20–2004 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 5–21–2004 order transmitted to OAL 9–20–2004 and filed 11–2–2004 (Register 2004, No. 45).
7. Amendment of penultimate paragraph filed 12–20–2004 as an emergency; operative 12–20–2004 (Register 2004, No. 52). A Certificate of Compliance must be transmitted to OAL by 4–19–2005 or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 12–20–2004 order transmitted to OAL 4–19–2005 and filed 5–12–2005 (Register 2005, No. 19).

§ 1859.126. Joint–Use Project Funding Priority and Funding Availability.

In each application acceptance period, the Board shall fund eligible Joint–Use Projects as follows:

(a) Type I Joint–Use Projects in the following order:

(1) By date order received for the applications the districts have designated as first funding priority.

(2) By date order received for the applications the districts have designated as second funding priority and so on until all Type I Joint–Use Project applications have been apportioned.

(b) Type II Joint–Use Projects in the following order:

(1) By date order received for the applications the districts have designated as first funding priority.

(2) By date order received for the applications the districts have designated as second funding priority and so on until all Type II Joint–Use Project applications have been apportioned.

If a Joint–Use Project cannot be fully apportioned because of the funding available, the district may either accept the available funding as the full and final apportionment for the project or refuse funding. If funding is refused, the application will be returned to the district and the Board shall consider funding the next project eligible for an apportionment based on the above funding priority mechanism.

Any Joint–Use Project not considered for an apportionment because of the above funding priority mechanism shall be returned to the district. A district may resubmit a returned Joint–Use Project application during the subsequent application acceptance period identified in Section 1859.121(b), if the application meets the eligibility criteria at the time of re–submittal.

Any funds not apportioned in the application acceptance period identified in Section 1859.121(a) or any Joint–Use Project funds returned due to projects being rescinded or reduced to cost incurred shall be made available for apportionment in the application acceptance period identified in Section 1859.121(b).

NOTE: Authority cited: Sections 17070.35 and 17075.15, Education Code. Reference: Sections 17077.40, 17077.42 and 17077.45, Education Code.

HISTORY

1. New section filed 11–4–2002 as an emergency; operative 11–4–2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11–4–2003 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 11–4–2002 order transmitted to OAL 11–4–2003 and filed 12–19–2003 (Register 2003, No. 51).
3. Repealer of subsections (c)–(c)(2) filed 5–21–2004 as an emergency; operative 5–21–2004 (Register 2004, No. 21). A Certificate of Compliance must be transmitted to OAL by 9–20–2004 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 5–21–2004 order transmitted to OAL 9–20–2004 and filed 11–2–2004 (Register 2004, No. 45).

§ 1859.127. Joint–Use Partner(s) Financial Contribution.

A financial contribution towards the cost of the Joint–Use Project equal to the state funding provided by these Regulations is required. The contribution made by the Joint–Use Partner(s) shall be no less than 25 percent of eligible project costs. The remaining local contribution may come from any other district source that would not otherwise be available to the State Allocation Board. If the school district has passed a local bond which specifies that such funds are to be used for the Joint–Use Project, then the school district may opt to provide up to the full 50 percent local share of eligible costs. Any funding provided by the Joint–Use Partner(s) cannot be funds that would otherwise be available to the district.

NOTE: Authority cited: Sections 17070.35 and 17075.15, Education Code. Reference: Sections 17077.40, 17077.42 and 17077.45, Education Code.

HISTORY

1. New section filed 11–4–2002 as an emergency; operative 11–4–2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11–4–2003 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 11–4–2002 order transmitted to OAL 11–4–2003 and filed 12–19–2003 (Register 2003, No. 51).
3. Amendment filed 5–21–2004 as an emergency; operative 5–21–2004 (Register 2004, No. 21). A Certificate of Compliance must be transmitted to OAL by 9–20–2004 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 5–21–2004 order transmitted to OAL 9–20–2004 and filed 11–2–2004 (Register 2004, No. 45).

§ 1859.128. Additional Financial Contribution.

If additional project costs will be incurred by the district beyond the state funding and the Joint–Use Partners' financial contribution required pursuant to Section 1859.127, the additional financial contribution may be made by the Joint–Use Partner(s), the district or from any other local source.

NOTE: Authority cited: Sections 17070.35 and 17075.15, Education Code. Reference: Sections 17077.40, 17077.42 and 17077.45, Education Code.

HISTORY

1. New section filed 11–4–2002 as an emergency; operative 11–4–2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11–4–2003 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 11–4–2002 order transmitted to OAL 11–4–2003 and filed 12–19–2003 (Register 2003, No. 51).

§ 1859.129. Time Limit on Apportionment.

(a) If the district received an apportionment for a Type I Joint–Use Project or a Type II, part of a qualifying SFP Modernization project, Joint–Use Project, the district is subject to the time limit on the apportionment as outlined in Education Code Section 17076.10.

(b) If the district received an apportionment for a Type II Joint–Use Project, not part of a qualifying SFP Modernization project, the district:

(1) Has one year from the date of that apportionment to submit the plans and specifications to the OPSC for the Joint–Use Project that have been approved by the DSA and the CDE (plans only), otherwise the apportionment will be rescinded without further Board action.

(2) Has 18 months from the date the DSA and CDE approved plans were submitted to the OPSC to submit a completed Form SAB 50–05 or the apportionment will be rescinded without further Board action.

(3) Is subject to substantial progress time limit on the apportionment as outlined in Subdivision (b) of Education Code Section 17076.10.

NOTE: Authority cited: Sections 17070.35 and 17075.15, Education Code. Reference: Sections 17076.10, 17077.40, 17077.42 and 17077.45, Education Code.

HISTORY

1. New section filed 11–4–2002 as an emergency; operative 11–4–2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11–4–2003 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 11–4–2002 order transmitted to OAL 11–4–2003 and filed 12–19–2003 (Register 2003, No. 51).
3. Amendment of subsections (a) and (b) filed 5–21–2004 as an emergency; operative 5–21–2004 (Register 2004, No. 21). A Certificate of Compliance must be transmitted to OAL by 9–20–2004 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 5–21–2004 order transmitted to OAL 9–20–2004 and filed 11–2–2004 (Register 2004, No. 45).

§ 1859.130. Eligible Joint–Use Project Expenditures.

Joint–Use Project Grants shall be expended as set forth in Education Code Section 17072.35 with the exception of site acquisition, including lease of land. When a new site is necessary for a Type I Joint–Use Project, the district may request site acquisition costs under the qualifying SFP New Construction project pursuant to Section 1859.123.

NOTE: Authority cited: Sections 17070.35 and 17075.15, Education Code. Reference: Sections 17077.40, 17077.42 and 17077.45, Education Code.

HISTORY

1. New section filed 11–4–2002 as an emergency; operative 11–4–2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11–4–2003 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 11–4–2002 order transmitted to OAL 11–4–2003 and filed 12–19–2003 (Register 2003, No. 51).
3. Amendment filed 5–21–2004 as an emergency; operative 5–21–2004 (Register 2004, No. 21). A Certificate of Compliance must be transmitted to OAL by 9–20–2004 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 5–21–2004 order transmitted to OAL 9–20–2004 and filed 11–2–2004 (Register 2004, No. 45).

Article 13. Critically Overcrowded School Facilities

§ 1859.140. General (Preliminary Apportionment).

A district seeking a Preliminary Apportionment pursuant to the provisions of Education Code Sections 17078.10 through 17078.30 for new construction shall complete and file a Form SAB 50–08.

NOTE: Authority cited: Sections 17070.35 and 17075.15, Education Code. Reference: Sections 17078.10 and 17078.22, Education Code.

HISTORY

1. New article 13 (sections 1859.140–1859.155) and section filed 11–4–2002 as an emergency; operative 11–4–2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11–4–2003 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 11–4–2002 order transmitted to OAL 11–4–2003 and filed 12–19–2003 (Register 2003, No. 51).

§ 1859.141. Preliminary Application Submittals.

The Board shall accept Preliminary Applications as follows:

(a) A district seeking a Preliminary Apportionment from the funding made available from Education Code Section 100620(a)(5), shall complete and submit Form SAB 50–08 between November 6, 2002 and May 1, 2003.

(b) A district seeking a Preliminary Apportionment from the funding made available from Education Code Section 100820(a)(3), shall complete and submit Form SAB 50–08 between 60 calendar days prior to and 120 calendar days after the 2004 election authorizing the funding.

After the Board has approved a Preliminary Apportionment for a Preliminary Application submitted as provided in (a) and/or (b), a district seeking an advance release of funds for site acquisition pursuant to Section 1859.153(b) or (c), shall be required to submit an additional Form SAB 50–08, to the OPSC, to determine eligible site acquisition costs. A district seeking an advance release of funds for design, engineering, and other pre–construction project costs pursuant to Section 1859.153(a), shall not be required to submit an additional Preliminary Application, as otherwise provided in (a) and/or (b).

If the voters do not approve Proposition 47 and/or the Kindergarten–University Public Education Facilities Bond Act of 2004, any Preliminary Application accepted for processing by the OPSC as provided in (a) and/or (b) as appropriate will be returned unprocessed to the district.

NOTE: Authority cited: Sections 17070.35 and 17075.15, Education Code. Reference: Sections 17078.10 and 17078.20, Education Code.

HISTORY

1. New section filed 11–4–2002 as an emergency; operative 11–4–2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11–4–2003 or emergency language will be repealed by operation of law on the following day.
2. New penultimate paragraph filed 5–1–2003 as an emergency; operative 5–1–2003 (Register 2003, No. 18). A Certificate of Compliance must be transmitted to OAL by 8–29–2003 or emergency language will be repealed by operation of law on the following day.
3. New penultimate paragraph refiled 8–29–2003 as an emergency; operative 8–29–2003 (Register 2003, No. 35). A Certificate of Compliance must be transmitted to OAL by 12–29–2003 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 11–4–2002 order transmitted to OAL 11–4–2003 and filed 12–19–2003 (Register 2003, No. 51).
5. Amendment of subsection (b) refiled 12–22–2003 as an emergency; operative 12–22–2003 (Register 2003, No. 52). A Certificate of Compliance must be transmitted to OAL by 4–20–2004 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 12–22–2003 order transmitted to OAL 4–19–2004 and filed 5–25–2004 (Register 2004, No. 22).

§ 1859.142. Preliminary Apportionment Eligibility Criteria.

A district may apply for a Preliminary Apportionment by submittal of Form SAB 50–08 if all of the following criteria are met:

(a) The district has demonstrated that it has SFP new construction eligibility under Education Code Section 17071.75.

(b) The project for which the district is requesting funding has not received an apportionment under the LPP, the SFP or other Proposition 1A funds, with the exception of apportionments prior to November 5, 2002 pursuant to Section 1859.81.1(e).

(c) At least 75 percent of the number of pupils requested on Form SAB 50–08 are Qualifying Pupils from a Source School(s) as determined in Section 1859.143.

(d) The General Location of a proposed school meets the criteria of Education Code Section 17078.22(a)(3) or (b).

If the proposed school will serve a combination of elementary school pupils and middle school pupils, the General Location of the school for purposes of (d) above shall be based on the highest grade served.

NOTE: Authority cited: Sections 17070.35 and 17075.15, Education Code. Reference: Sections 17078.18 and 17078.22, Education Code.

HISTORY

1. New section filed 11–4–2002 as an emergency; operative 11–4–2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11–4–2003 or emergency language will be repealed by operation of law on the following day.
2. Amendment of subsection (b) filed 5–1–2003 as an emergency; operative 5–1–2003 (Register 2003, No. 18). A Certificate of Compliance must be trans-

mitted to OAL by 8–29–2003 or emergency language will be repealed by operation of law on the following day.

3. Amendment of subsection (b) refiled 8–29–2003 as an emergency; operative 8–29–2003 (Register 2003, No. 35). A Certificate of Compliance must be transmitted to OAL by 12–29–2003 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 11–4–2002 order transmitted to OAL 11–4–2003 and filed 12–19–2003 (Register 2003, No. 51).
5. Amendment of subsection (b) refiled 12–22–2003 as an emergency; operative 12–22–2003 (Register 2003, No. 52). A Certificate of Compliance must be transmitted to OAL by 4–20–2004 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 12–22–2003 order transmitted to OAL 4–19–2004 and filed 5–25–2004 (Register 2004, No. 22).

§ 1859.143. Determination of Source School Qualifying Pupil Baseline Eligibility.

After the CDE Source School List has been published by the CDE, the Qualifying Pupils for a Source School shall be determined as follows:

(a) Multiply the Useable Acres of the Source School by:

(1) 86 pupils per acre for a Source School identified as elementary on the CDE Source School List.

(2) 68 pupils per acre for a Source School identified as a middle school or a high school on the CDE Source School List.

(b) Determine the latest CBEDS enrollment for the Source School as of the date the district submitted the Preliminary Application to the OPSC.

(c) Subtract the amount determined in (a) from the amount determined in (b). The difference is the Qualifying Pupils baseline eligibility for the specific Source School.

NOTE: Authority cited: Sections 17070.35 and 17075.15, Education Code. Reference: Section 17078.18, Education Code.

HISTORY

1. New section filed 11–4–2002 as an emergency; operative 11–4–2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11–4–2003 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 11–4–2002 order transmitted to OAL 11–4–2003 and filed 12–19–2003 (Register 2003, No. 51).

§ 1859.144. Adjustments to the Source School Qualifying Pupil Baseline Eligibility.

The Source School Qualifying Pupil baseline eligibility determined in Section 1859.143 will be adjusted as follows:

(a) Reduced by the number of Qualifying Pupils the district assigned on the Preliminary Application to meet the 75 percent requirement in Section 1859.142(c).

(b) Increased by the Qualifying Pupils the district assigned on the Preliminary Application to meet the 75 percent requirement in Section 1859.142(c) that has been rescinded pursuant to Section 1859.148.

(c) Increased/decreased for changes in CBEDS enrollment in subsequent enrollment reporting years.

(d) Increased/decreased for changes in the Useable Acres originally reported on the CDE Source School List.

NOTE: Authority cited: Sections 17070.35 and 17075.15, Education Code. Reference: Section 17078.18, Education Code.

HISTORY

1. New section filed 11–4–2002 as an emergency; operative 11–4–2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11–4–2003 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 11–4–2002 order transmitted to OAL 11–4–2003 and filed 12–19–2003 (Register 2003, No. 51).

§ 1859.145. Preliminary Apportionment Determination.

The Preliminary Apportionment shall be equal to the sum of the following:

(a) The amounts shown below for each pupil included in a Preliminary Application:

(1) $5,226.82 for each elementary school pupil.

(2) $5,533.65 for each middle school pupil.

(3) $7,225.94 for each high school pupil.

(4) $16,653.06 for each pupil that is a Severely Disabled Individual with Exceptional Needs.

(5) $11,137.37 for each pupil that is a Non–Severely Disabled Individual with Exceptional Needs.

(b) An amount equal to 12 percent of the amount determined in (a) for multilevel construction, if requested by the district.

(c) An amount equal to one–half of the site acquisition value determined in Section 1859.145.1.

(d) An amount for site development cost determined, at the option of the district, by one of the following:

(1) One–half of the Site Development Cost for the specific site as authorized by Section 1859.76.

(2) One–half of the Site Development Cost as authorized by Section 1859.76 using historical information in the General Location. Historical information that may be considered to determine this estimated cost may include prior SFP projects of the district or other districts in the General Location.

(3) $70,000 multiplied by the proposed acres requested on the Form SAB 50–08.

(e) If the Preliminary Application request is for a small new school on a site with no existing school facilities, an amount equal to the difference in the amount determined in (a) and the amount shown in the Chart in Section 1859.83(c). To determine the number of classrooms in the proposed project, divide the number of pupils requested on Form SAB 50–08, by 25 for elementary school pupils, 27 for middle and high school pupils, 13 for Non–Severely Disabled Individuals with Exceptional Needs and 9 for Severely Disabled Individuals with Exceptional Needs. Round up.

(f) An amount due to urban location, security requirements and impacted site equal to 15 percent of the amount determined in (a) for a site that is 60 percent of the CDE recommended site size plus 1.166 percent for each percentage decrease in the CDE recommended site below 60 percent when the following criteria are met:

(1) The district has requested an increase for multilevel construction pursuant to (b) above.

(2) The Useable Acres of the existing and/or proposed site are 60 percent or less of the CDE recommended site size determined by multiplying the sum of the pupil grants requested on Form SAB 50–08, and the current CBEDS enrollment on the site (if applicable) by .01775 for elementary school pupils, .021 for middle school pupils and .02472 for high school pupils. For purposes of this calculation, assign Severely Disabled Individuals with Exceptional Needs and Non–Severely Disabled Individuals with Exceptional Needs pupil grants requested on Form SAB 50–08, as either elementary, middle or high school pupils based on the type of project selected by the district on Form SAB 50–08. For purposes of COS projects, if the site for which the Preliminary Apportionment is requested is a Source School, for purposes of assigning Qualifying Pupils in the Preliminary Application, subtract those Qualifying Pupils from the current CBEDS enrollment on the site before completing this calculation.

(3) The value of the property as determined in Section 1859.145.1(a)(1) is at least $750,000 per Useable Acre. This criterion does not apply to an application for an addition to an existing school site.

(g) An amount for the geographic location of the proposed project equal to the sum of the amounts determined in (a), (b), (d)(3), (e) and (f) multiplied by the indicated percentage factor in the Geographic Percentage Chart shown in Section 1859.83(a).

(h) For purposes of COS projects, an amount equal to 12 percent of the sum of the amounts determined in (a) through (g) for all Preliminary Applications received no later than May 1, 2003. For all Preliminary Applications received after May 1, 2003 an amount equal to the sum of the amounts determined in (a) through (g) multiplied by a factor determined as follows:

(1) Divide the January Class B Construction Cost Index in effect at the time of Preliminary Apportionment by the January Class B Construction Cost Index in effect four years prior to the Preliminary Apportionment. Round to four decimal places.

(2) Subtract 1 from the quotient in (1). Round to two decimal places.

(i) If the district qualifies for financial hardship assistance pursuant to Section 1859.81 at the time of submittal of the Preliminary Application, an amount equal to the sum of the amounts determined in (a) through (h) less any district funds determined available for the project pursuant to Section 1859.81(a). Districts must meet the financial hardship criteria pursuant to Section 1859.81 at the time the request is made to convert the Preliminary Apportionment to a Final Apportionment, including an accountability of any district contribution made available at the time of the Preliminary Apportionment was made, in order to continue with financial hardship assistance for the project.

(j) If the district received an apportionment prior to November 5, 2002 pursuant to Section 1859.81.1(e), an amount equal to the sum of the amounts determined in (a) through (i) less the previously authorized apportionment amount.

The amounts shown in (a) shall be adjusted in a manner prescribed in Section 1859.71. The district may be eligible for the funding provided to initiate and enforce a LCP as prescribed in Section 1859.71.4.

NOTE: Authority cited: Sections 17070.35 and 17075.15, Education Code. Reference: Sections 17075.10, 17078.10 and 17078.24, Education Code.

HISTORY

1. New section filed 11–4–2002 as an emergency; operative 11–4–2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11–4–2003 or emergency language will be repealed by operation of law on the following day.
2. Amendment filed 2–27–2003 as an emergency; operative 2–27–2003 (Register 2003, No. 9). A Certificate of Compliance must be transmitted to OAL by 6–27–2003 or emergency language will be repealed by operation of law on the following day.
3. New subsection (j) filed 5–1–2003 as an emergency; operative 5–1–2003 (Register 2003, No. 18). A Certificate of Compliance must be transmitted to OAL by 8–29–2003 or emergency language will be repealed by operation of law on the following day.
4. Amendment refiled 6–19–2003 as an emergency; operative 6–19–2003 (Register 2003, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–17–2003 or emergency language will be repealed by operation of law on the following day.
5. Amendment of last paragraph filed 8–25–2003 as an emergency; operative 8–25–2003 (Register 2003, No. 35). A Certificate of Compliance must be transmitted to OAL by 12–23–2003 or emergency language will be repealed by operation of law on the following day.
6. New subsection (j) refiled 8–29–2003 as an emergency; operative 8–29–2003 (Register 2003, No. 35). A Certificate of Compliance must be transmitted to OAL by 12–29–2003 or emergency language will be repealed by operation of law on the following day.
7. Amendment refiled 10–10–2003 as an emergency; operative 10–10–2003 (Register 2003, No. 41). A Certificate of Compliance must be transmitted to OAL by 2–9–2004 or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 11–4–2002 order transmitted to OAL 11–4–2003 and filed 12–19–2003 (Register 2003, No. 51).
9. New subsection (j) refiled 12–22–2003 as an emergency; operative 12–22–2003 (Register 2003, No. 52). A Certificate of Compliance must be transmitted to OAL by 4–20–2004 or emergency language will be repealed by operation of law on the following day.
10. Reinstatement of section as it existed prior to 8–25–2003 emergency amendment by operation of Government Code section 11346.1(f) (Register 2004, No. 9).
11. Certificate of Compliance as to 10–10–2003 order transmitted to OAL 2–9–2004 and filed 3–23–2004 (Register 2004, No. 13).
12. Certificate of Compliance as to 12–22–2003 order transmitted to OAL 4–19–2004 and filed 5–25–2004 (Register 2004, No. 22).
13. Amendment of subsections (d)(3), (e), (f)(2) and (h) filed 6–1–2004 as an emergency; operative 6–1–2004 (Register 2004, No. 23). A Certificate of Compliance must be transmitted to OAL by 9–29–2004 or emergency language will be repealed by operation of law on the following day.
14. Amendment of subsections (f)(3) and (h) and new subsections (h)(1)–(2) filed 7–2–2004; operative 7–2–2004 pursuant to Government Code section 11343.4 (Register 2004, No. 27).
15. Editorial correction of subsection (h)(2) (Register 2004, No. 46).
16. Certificate of Compliance as to 6–1–2004 order transmitted to OAL 9–29–2004 and filed 11–10–2004 (Register 2004, No. 46).
17. Amendment of last paragraph filed 12–20–2004 as an emergency; operative 12–20–2004 (Register 2004, No. 52). A Certificate of Compliance must be transmitted to OAL by 4–19–2005 or emergency language will be repealed by operation of law on the following day.
18. Certificate of Compliance as to 12–20–2004 order transmitted to OAL 4–19–2005 and filed 5–12–2005 (Register 2005, No. 19).

§ 1859.145.1. Preliminary Apportionment Site Acquisition Value.

(a) If the Preliminary Application includes a request for site acquisition funding, the preliminary value of the proposed site shall be the sum of the following:

(1) The value of the property determined by one of the following:

(A) By an appraisal or a preliminary appraisal of the property made no more than six months prior to the date the Preliminary Application was submitted to the OPSC, using the guidelines outlined in Section 1859.74.1. The preliminary appraisal may be made without access to the property. The acreage identified in the appraisal or the preliminary appraisal may not exceed the proposed useable acreage requested on Form SAB 50–08.

(B) The Median Cost of an acre of land in the General Location of the proposed project using historical information in the General Location multiplied by the number of proposed useable acres requested on Form SAB 50–08. Historical information that may be considered to determine land cost may include prior real–estate sales consummated and documented by the county recorder or pending real–estate sales documented by a title insurance company's escrow instructions. For purposes of historical information, include all real–estate sales consummated and documented by the county recorder for a minimum of six months and a maximum of up to two years prior to the date the Preliminary Application was submitted to the OPSC.

(2) An amount for the estimated relocation cost and the estimated DTSC costs for review, approval and oversight of the POESA and the PEA as determined by one of the following:

(A) 21 percent of the value determined in (a)(1).

(B) The sum of the following:

1. The approved relocation expenses for the specific site to be acquired that conform to Title 25, California Code of Regulations, Section 6000, et. seq.

2. The DTSC cost for review, approval, and oversight of the POESA and the PEA for the specific site to be acquired.

(C) The estimated relocation cost and the estimated DTSC costs for review, approval and oversight of the POESA and the PEA using historical information in the General Location. Historical information that may be considered to determine these estimated costs may include prior real–estate acquisitions of the district or other districts in the General Location.

(3) Four percent of the amount determined in (a)(1), but not less than $50,000. This amount shall provide an allowance of any appraisal, escrow, survey, site testing, CDE review/approvals and preparation of the POESA and the PEA.

(4) For allowable costs of hazardous material/waste removal and remediation costs, one–half times the value of the property determined in either (a)(1)(A) or (a)(1)(B), above.

(b) If the Preliminary Application includes a request for hazardous waste removal required on an existing school site, the preliminary value for site acquisition funding shall be the sum of the following:

(1) With the exception of projects that received initial site acquisition funds under the SFP, the Board shall provide an amount for the necessary hazardous waste materials/waste removal and/or remediation costs on an existing school site where the Preliminary Apportionment will be used if all the following are met:

(A) The Preliminary Application request is for additional school facilities on an existing school site.

(B) The Preliminary Application request does not include a funding request for site acquisition costs allowed pursuant to Section 1859.145.1(a).

(C) The existing school site where the Preliminary Apportionment will be expended has a functioning school on the site or the site had a closed school that will again be used as a functioning school.

(D) The hazardous material cleanup costs are required by the DTSC.

(2) If all the criteria in subsection (b) are met, the allowable hazardous waste removal cleanup costs shall be all the following:

(A) The costs for preparation of the POESA, the PEA and the RA.

(B) The costs to implement the RA as determined necessary in the PEA that has been approved by the DTSC subject to the following:

1. The costs may include the DTSC costs for review and oversight of the preparation and implementation of the RA.

2. The costs may not include continuous operational and maintenance costs associated with the RA.

NOTE: Authority cited: Sections 17070.35 and 17075.15, Education Code. Reference: Sections 17072.13, 17072.18, 17078.10 and 17078.24, Education Code.

HISTORY

1. New section filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.
2. Amendment of section and NOTE filed 2-13-2003 as an emergency pursuant to Education Code section 17078.64(b); operative 2-13-2003 (Register 2003, No. 7). A Certificate of Compliance must be transmitted to OAL by 6-13-2003 or emergency language will be repealed by operation of law on the following day.
3. Amendment of section and NOTE refiled 6-13-2003 as an emergency; operative 6-13-2003 (Register 2003, No. 24). A Certificate of Compliance must be transmitted to OAL by 10-13-2003 or emergency language will be repealed by operation of law on the following day.
4. Amendment of section and NOTE refiled 10-9-2003 as an emergency; operative 10-9-2003 (Register 2003, No. 41). A Certificate of Compliance must be transmitted to OAL by 2-6-2004 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 11-4-2002 order transmitted to OAL 11-4-2003 and filed 12-19-2003 (Register 2003, No. 51).
6. Certificate of Compliance as to 10-9-2003 order transmitted to OAL 2-6-2004 and filed 3-23-2004 (Register 2004, No. 13).
7. Amendment of subsections (a)(1), (a)(2) and (b)(2)(B) filed 6-1-2004 as an emergency; operative 6-1-2004 (Register 2004, No. 23). A Certificate of Compliance must be transmitted to OAL by 9-29-2004 or emergency language will be repealed by operation of law on the following day.
8. Amendment of section and NOTE filed 7-2-2004; operative 7-2-2004 pursuant to Government Code section 11343.4 (Register 2004, No. 27).
9. Certificate of Compliance as to 6-1-2004 order transmitted to OAL 9-29-2004 and filed 11-10-2004 (Register 2004, No. 46).
10. Amendment of subsection (a)(1)(B) filed 3-2-2005; operative 3-2-2005 pursuant to Government Code section 11343.4 (Register 2005, No. 9).

§ 1859.146. Preliminary Apportionment Funding Priorities.

If the amounts of the Preliminary Applications received pursuant to Section 1859.141 exceed the funds available, the Board shall first apportion those Preliminary Applications that will house pupils from Source Schools with the highest pupil density levels. The calculation in (a) through (e) below is made independently for each Source School from which Qualifying Pupils are assigned. All calculations are rounded up to four decimal places. The pupil density level for the Preliminary Application is the amount determined in (f) as follows:

(a) Divide the latest CBEDS enrollment of the Source School by the Useable Acres of the Source School as shown on the CDE Source School List.

(b) Divide the quotient determined in (a) by:

(1) 115 if the Source School is identified as an elementary school on the CDE Source School List.

(2) 90 if the Source School is identified as a middle school or a high school on the CDE Source School List.

(c) Subtract 1 from the quotient determined in (b).

(d) Divide the Source School's Qualifying Pupils by the total Qualifying Pupils assigned.

(e) Multiply the difference determined in (c) by the quotient determined in (d).

(f) Add the product(s) determined in (e) for each Source School the district assigned Qualifying Pupils from to meet the 75 percent requirement in Section 1859.142(c).

All Preliminary Applications received from a district will be processed in the date order received by the OPSC. If more than one Preliminary Application is received on the same day, those applications will be processed by the OPSC based on the priority order assigned to those applications by the district on Form SAB 50-08.

If two or more Preliminary Applications have the same pupil density level, the Board shall first apportion that Preliminary Application that was received first by the OPSC.

NOTE: Authority cited: Sections 17070.35 and 17075.15, Education Code. Reference: Section 17078.20, Education Code.

HISTORY

1. New section filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 11-4-2002 order transmitted to OAL 11-4-2003 and filed 12-19-2003 (Register 2003, No. 51).

§ 1859.147. Conversion of Preliminary Apportionment.

When a Preliminary Apportionment is converted to a Final Apportionment, the following criteria must be met:

(a) The district must have current New Construction Eligibility sufficient to support at least 75 percent of the pupils the district requested and received the Preliminary Apportionment, except as allowed in (d) or (e).

(b) The Final Apportionment request must meet all criteria for a New Construction Adjusted Grant pursuant to Section1859.21.

(c) A district seeking to convert a Preliminary Apportionment to a Final Apportionment shall complete and file Form SAB 50-04, which requests funding for at least 75 percent, but not more than 100 percent, of the pupils the district requested and received the Preliminary Apportionment.

(d) In lieu of (c), when the district's enrollment has decreased to less then 75 percent of the pupils requested for the project's Preliminary Apportionment, the district may utilize any SFP eligibility justified for its conversion to a Final Apportionment.

(e) In lieu of (a), sufficient project eligibility may be determined utilizing:

(1) The current year enrollment as recorded on the Form SAB 50-01 for the year in which the application for the Final Apportionment is submitted.

(2) Either (A) or (B) below for a district reporting eligibility pursuant to Section 1859.41. Once utilized that same subparagraph must be used for all remaining Preliminary Apportionments under this subdivision:

(A) The current year pupil residence data within the HSAA in which the project will be built, for the year in which the application for the Final Apportionment is submitted.

(B) The projected pupil residence for the year in which the application for the Final Apportionment is submitted, calculated by the cohort survival enrollment projection method, utilizing pupil residence data for the HSAA in which the project will be built.

It is not necessary to re-justify the Qualifying Pupils assigned to the Preliminary Application as required by Section 1859.142(c) at the time the application is converted to a Final Apportionment.

An Approved Application received by the OPSC on or after January 1, 2005 to convert a Preliminary Apportionment to a Final Apportionment may utilize an alternate eligibility justification pursuant to Section 1859.147(e), provided that the project meets all other funding requirements at the time of submittal.

If the district is unable to meet the criteria in this Section, the Preliminary Apportionment shall be rescinded pursuant to the provisions of Section 1859.148.

NOTE: Authority cited: Sections 17070.35 and 17075.15, Education Code. Reference: Section 17078.27, Education Code.

HISTORY

1. New section filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.
2. Amendment of first paragraph and subsection (a) and new subsection (d) filed 5-1-2003 as an emergency; operative 5-1-2003 (Register 2003, No. 18). A Certificate of Compliance must be transmitted to OAL by 8-29-2003 or emer
3. Amendment of first paragraph and subsection (a) and new subsection (d) refiled 8-29-2003 as an emergency; operative 8-29-2003 (Register 2003, No. 35). A Certificate of Compliance must be transmitted to OAL by 12-29-2003 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 11-4-2002 order transmitted to OAL 11-4-2003 and filed 12-19-2003 (Register 2003, No. 51).

5. Amendment of first paragraph and subsection (a) and new subsection (d) refiled 12–22–2003 as an emergency; operative 12–22–2003 (Register 2003, No. 52). A Certificate of Compliance must be transmitted to OAL by 4–20–2004 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 12–22–2003 order transmitted to OAL 4–19–2004 and filed 5–25–2004 (Register 2004, No. 22).
7. Amendment of subsection (a), new subsections (e)–(e)(2)(B) and new penultimate paragraph filed 10–27–2005; operative 10–27–2005 pursuant to Government Code section 11343.4 (Register 2005, No. 43).
8. Amendment of subsection (e) filed 5–15–2006 as an emergency; operative 5–15–2006 (Register 2006, No. 20). A Certificate of Compliance must be transmitted to OAL by 9–12–2006 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 5–15–2006 order transmitted to OAL 7–19–2006 and filed 8–11–2006 (Register 2006, No. 32).

§ 1859.148. Time Limit on a Preliminary Apportionment.

(a) A Preliminary Apportionment not converted or requested to be converted to a Final Apportionment shall be rescinded:

(1) After one year from the date the Preliminary Apportionment was made unless the CDE has determined:

(A) There is at least one approvable site for the project within the General Location; and,

(B) The General Location of the proposed school will serve the Qualifying Pupils assigned to the Preliminary Application.

(2) After four years from the date the Preliminary Apportionment was made unless the district received approval of an extension pursuant to Section 1859.148.1.

(3) After five years from the date the Preliminary Apportionment was made if the district qualified for an extension pursuant to Section 1859.148.1.

(b) If a Preliminary Apportionment that did not have an advance release of funds pursuant to Section 1859.153 is rescinded, the following will occur:

(1) The SFP new construction baseline eligibility will be increased for the pupils assigned to the Preliminary Application not previously included in an apportionment pursuant to Section 1859.81.1(e). The previous design only apportionment, prior to November 5, 2002, shall be reduced to cost incurred with a corresponding SFP new construction baseline eligibility adjustment and closeout pursuant to Section 1859.106.

(2) The Qualifying Pupil baseline eligibility will be increased by the Qualifying Pupils assigned to meet the 75 percent requirement in Section 1859.142(c) of the Preliminary Application.

(3) Any Preliminary Apportionment rescinded is subject to accountability pursuant to Section 1859.154(c).

(4) The district may request funding for the proposed project again, without restriction under any SFP Program, provided the project meets the eligible criteria of that specific program. Re–submittal of the funding request may occur as follows:

(A) If the project was rescinded pursuant to (a)(1) or (a)(3), anytime after the Preliminary Apportionment is rescinded.

(B) If the project was rescinded pursuant to (a)(2) and the final plans for the project are not complete within four years of the Preliminary Apportionment, anytime after the Preliminary Apportionment is rescinded.

(C) If the project was rescinded pursuant to (a)(2) and the final plans for the project were completed within four years after the Preliminary Apportionment, anytime after a period of five years from the date of the Preliminary Apportionment.

(5) The Preliminary Apportionment shall be transferred to the Unrestricted Fund within the 2002 (or 2004, as appropriate) Critically Overcrowded School Facilities Account.

(c) If a Preliminary Apportionment that had an advance release of funds as provided in Section 1859.153 and/or an apportionment pursuant to Section 1859.81.1(e) prior to November 5, 2002, is rescinded pursuant to (a)(2) or (a)(3), the following will occur:

(1) The remaining Preliminary Apportionment, not released to the district, shall be transferred to the Unrestricted Fund within the 2002 (or 2004, as appropriate) Critically Overcrowded School Facilities Account.

(2) Funds released pursuant to Sections 1859.81.1(e) and 1859.153 shall be reduced to cost incurred and closeout pursuant to Section 1859.106 with a corresponding SFP new construction baseline eligibility adjustment for the pupils assigned to the Preliminary Application. Funds returned pursuant to Section 1859.106 shall be transferred to the Unrestricted Fund within the 2002 (or 2004, as appropriate) Critically Overcrowded School Facilities Account.

(3) The Qualifying Pupil baseline eligibility will be adjusted proportionately to the adjustment in (c)(2) and maintain the ratio of the SFP New Construction Eligibility to Qualifying Pupils assigned to meet the requirements in Section 1859.142(c) of the Preliminary Application.

(4) Any Preliminary Apportionment rescinded is subject to accountability pursuant to Section 1859.154(c).

(5) The district may request funding for the proposed project again, in accordance with (b)(4), provided this rescinded Preliminary Apportionment is disclosed.

Should the district not submit Form SAB 50–04 pursuant to Section 1859.150 within the time limits of this Section, the district must report the final expenditures on the project on the Form SAB 50–06 to the OPSC within 30 days of the OPSC notification. If the expenditure report for funds released pursuant to Section 1859.153(a), (b) and/or (c) is not received within the 30–day period, the OPSC will recommend that the Preliminary Apportionment be rescinded and any interest earned on State funds be returned to the State.

NOTE: Authority cited: Sections 17070.35 and 17075.15, Education Code. Reference: Sections 17078.22 and 17078.25, Education Code.

HISTORY

1. New section filed 11–4–2002 as an emergency; operative 11–4–2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11–4–2003 or emergency language will be repealed by operation of law on the following day.
2. Amendment of subsections (b), (b)(1), (b)(3) and (b)(4)(C) and new subsections (b)(5)–(c)(5) filed 5–1–2003 as an emergency; operative 5–1–2003 (Register 2003, No. 18). A Certificate of Compliance must be transmitted to OAL by 8–29–2003 or emergency language will be repealed by operation of law on the following day.
3. Amendment of subsections (b), (b)(1), (b)(3) and (b)(4)(C) and new subsections (b)(5)–(c)(5) refiled 8–29–2003 as an emergency; operative 8–29–2003 (Register 2003, No. 35). A Certificate of Compliance must be transmitted to OAL by 12–29–2003 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 11–4–2002 order transmitted to OAL 11–4–2003 and filed 12–19–2003 (Register 2003, No. 51).
5. Amendment of subsections (b), (b)(1), (b)(3) and (b)(4)(C) and new subsections (b)(5)–(c)(5) refiled 12–22–2003 as an emergency; operative 12–22–2003 (Register 2003, No. 52). A Certificate of Compliance must be transmitted to OAL by 4–20–2004 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 12–22–2003 order transmitted to OAL 4–19–2004 and filed 5–25–2004 (Register 2004, No. 22).

§ 1859.148.1. Preliminary Apportionment Time Limit Extension.

A district that has received a Preliminary Apportionment may request a one–year extension of the time limit on the apportionment prescribed in Section 1859.148. The Board shall approve the request provided the criteria in (a) or (b) are met:

(a) The district has provided evidence of both of the following:

(1) The CDE has made a contingent or final approval of the proposed site.

(2) The DSA has confirmed that the final plans for the project have been submitted to the DSA for review and approval.

(b) Other evidence satisfactory to the Board.

NOTE: Authority cited: Sections 17070.35 and 17075.15, Education Code. Reference: Section 17078.25, Education Code.

HISTORY

1. New section filed 11–4–2002 as an emergency; operative 11–4–2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of

Compliance must be transmitted to OAL by 11–4–2003 or emergency language will be repealed by operation of law on the following day.

2. Certificate of Compliance as to 11–4–2002 order transmitted to OAL 11–4–2003 and filed 12–19–2003 (Register 2003, No. 51).

§ 1859.149. Preliminary Apportionment Progress Reporting Requirements.

Until a Preliminary Apportionment is converted to a Final Apportionment, the district shall submit an annual progress report of the project to the OPSC. The reports are due annually, beginning in the twelfth month after the date the Preliminary Apportionment was made.

(a) The first progress report shall include:

(1) A statement as to whether the CDE has made a certification that there is at least one approvable site for the project within the General Location and whether the General Location will serve the Qualifying Pupils assigned to the Preliminary Application to meet the 75 percent requirement in Section 1859.142(c).

(2) A copy of the CDE letter supporting the certifications in (a)(1), if appropriate.

(3) Progress towards completing the requirements for a Final Apportionment as provided in Education Code Section 17078.25(d).

(b) Subsequent progress reports shall include the progress made towards completing the requirements for a Final Apportionment provided in Education Code Section 17078.25(d).

NOTE: Authority cited: Sections 17070.35 and 17075.15, Education Code. Reference: Section 17078.25, Education Code.

HISTORY

1. New section filed 11–4–2002 as an emergency; operative 11–4–2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11–4–2003 or emergency language will be repealed by operation of law on the following day.

2. Certificate of Compliance as to 11–4–2002 order transmitted to OAL 11–4–2003 and filed 12–19–2003 (Register 2003, No. 51).

§ 1859.150. Final Apportionment.

The amount of the Final Apportionment is based on the provisions of any amended or new regulations that are effective at the time the Form SAB 50–04, for the Final Apportionment is submitted and accepted for processing by the OPSC. The Board shall convert the amounts determined below from the Preliminary Apportionment to the Final Apportionment:

(a) If the Final Apportionment request is equal to or less than the Preliminary Apportionment, the Board shall convert the Preliminary Appor-

[The next page is 234.36(y).]

tionment to a Final Apportionment. The difference in the Final Apportionment and the Preliminary Apportionment shall be transferred to the Unrestricted Fund in the 2002 (or 2004, as appropriate) Critically Overcrowded School Facilities Account. The Final Apportionment shall become the full and final apportionment for the project.

(b) If the Final Apportionment request is greater than the Preliminary Apportionment, the Board shall:

(1) Convert the Preliminary Apportionment to a Final Apportionment, if the balance in the Unrestricted Fund in the 2002 (or 2004, as appropriate) Critically Overcrowded School Facilities Account is greater than the difference in the Final Apportionment and the Preliminary Apportionment. The difference in the Final Apportionment and the Preliminary Apportionment shall be transferred from the Unrestricted Fund in the 2002 (or 2004, as appropriate) Critically Overcrowded School Facilities Account and converted to a Final Apportionment for the project. The combined Final Apportionments shall become the full and final apportionment for the project.

(2) Convert the Preliminary Apportionment to a Final Apportionment, if the balance in the Unrestricted Fund in the 2002 (or 2004, as appropriate) Critically Overcrowded School Facilities Account is less than the difference in the Final Apportionment and the Preliminary Apportionment. The balance of the Unrestricted Fund in the 2002 (or 2004, as appropriate) Critically Overcrowded School Facilities Account shall be converted to a Final Apportionment for the project. Any amount of the Final Apportionment request not converted to a Final Apportionment shall be placed on a Final Apportionment Unfunded List and may be converted to a Final Apportionment at a later date pursuant to the provisions of Section 1859.150.1.

NOTE: Authority cited: Sections 17070.35 and 17075.15, Education Code. Reference: Section 17078.27, Education Code.

HISTORY

1. New section filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 11-4-2002 order transmitted to OAL 11-4-2003 and filed 12-19-2003 (Register 2003, No. 51).

§ 1859.150.1. Final Apportionment Unfunded List.

Any portion of a Final Apportionment request not converted to a Final Apportionment pursuant to Section 1859.150(b)(2), shall be placed on a Final Apportionment Unfunded List based on the date of the Final Apportionment. If, at a later date, funds become available in the Unrestricted Fund in the 2002 (or 2004, as appropriate) Critically Overcrowded School Facilities Account as a result of rescissions pursuant to Section 1859.148, the Board shall convert the amounts shown on the Final Apportionment Unfunded List to a Final Apportionment based on the oldest date first and subject to the following:

(a) If the funds available are sufficient to convert the entire amount shown on the Final Apportionment Unfunded List, the amount shown shall be converted and added to the amount initially converted to a Final Apportionment. The total amounts converted shall become the full and final apportionment for the project.

(b) If the funds available are insufficient to convert the entire amount shown on the Final Apportionment Unfunded List, the district may:

(1) Request that the funds available be converted and added to the amount initially converted to a Final Apportionment. The total amounts converted shall become the full and final apportionment for the project.

(2) Request that the project not be converted until there are sufficient funds to convert the entire amount shown on the Final Apportionment Unfunded List.

The amounts shown on the Final Apportionment Unfunded List are not subject to any adjustments as prescribed in Section 1859.71.

If the amount shown on the Final Apportionment Unfunded List cannot be converted to a Final Apportionment because there are no funds remaining in the 2002 (or 2004, as appropriate) Critically Overcrowded School Facilities Account after all rescissions and final expenditure audits pursuant to Section 1859.148 have been made, the amount converted previously shall become the full and final apportionment for the project.

NOTE: Authority cited: Sections 17070.35 and 17075.15, Education Code. Reference: Section 17078.27, Education Code.

HISTORY

1. New section filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.
2. Amendment of last paragraph filed 5-1-2003 as an emergency; operative 5-1-2003 (Register 2003, No. 18). A Certificate of Compliance must be transmitted to OAL by 8-29-2003 or emergency language will be repealed by operation of law on the following day.
3. Amendment of last paragraph refiled 8-29-2003 as an emergency; operative 8-29-2003 (Register 2003, No. 35). A Certificate of Compliance must be transmitted to OAL by 12-29-2003 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 11-4-2002 order transmitted to OAL 11-4-2003 and filed 12-19-2003 (Register 2003, No. 51).
5. Amendment of last paragraph refiled 12-22-2003 as an emergency; operative 12-22-2003 (Register 2003, No. 52). A Certificate of Compliance must be transmitted to OAL by 4-20-2004 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 12-22-2003 order transmitted to OAL 4-19-2004 and filed 5-25-2004 (Register 2004, No. 22).

§ 1859.151. Preliminary Apportionment District Matching Share Requirement.

Once a Preliminary Apportionment is converted to a Final Apportionment or has funds released pursuant to Section 1859.153, the district will be subject to the district matching share requirement as described in Section 1859.77.1.

NOTE: Authority cited: Sections 17070.35 and 17075.15, Education Code. Reference: Sections 17072.30, 17078.10 and 17078.24, Education Code.

HISTORY

1. New section filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.
2. Amendment filed 5-1-2003 as an emergency; operative 5-1-2003 (Register 2003, No. 18). A Certificate of Compliance must be transmitted to OAL by 8-29-2003 or emergency language will be repealed by operation of law on the following day.
3. Amendment refiled 8-29-2003 as an emergency; operative 8-29-2003 (Register 2003, No. 35). A Certificate of Compliance must be transmitted to OAL by 12-29-2003 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 11-4-2002 order transmitted to OAL 11-4-2003 and filed 12-19-2003 (Register 2003, No. 51).
5. Amendment refiled 12-22-2003 as an emergency; operative 12-22-2003 (Register 2003, No. 52). A Certificate of Compliance must be transmitted to OAL by 4-20-2004 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 12-22-2003 order transmitted to OAL 4-19-2004 and filed 5-25-2004 (Register 2004, No. 22).

§ 1859.152. Eligible Expenditures.

SFP grants provided as the Final Apportionment or pursuant to Section 1859.153 must comply with Education Code Section 17072.35. Additionally, expenditures for construction are eligible only if the construction contract was entered into on or after April 29, 2002.

NOTE: Authority cited: Sections 17070.35 and 17075.15, Education Code. Reference: Sections 17072.35, 17078.10 and 17078.27, Education Code.

HISTORY

1. New section filed 11-4-2002 as an emergency; operative 11-4-2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11-4-2003 or emergency language will be repealed by operation of law on the following day.
2. Amendment filed 5-1-2003 as an emergency; operative 5-1-2003 (Register 2003, No. 18). A Certificate of Compliance must be transmitted to OAL by 8-29-2003 or emergency language will be repealed by operation of law on the following day.
3. Amendment refiled 8-29-2003 as an emergency; operative 8-29-2003 (Register 2003, No. 35). A Certificate of Compliance must be transmitted to OAL by 12-29-2003 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 11-4-2002 order transmitted to OAL 11-4-2003 and filed 12-19-2003 (Register 2003, No. 51).

5. Amendment refiled 12–22–2003 as an emergency; operative 12–22–2003 (Register 2003, No. 52). A Certificate of Compliance must be transmitted to OAL by 4–20–2004 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 12–22–2003 order transmitted to OAL 4–19–2004 and filed 5–25–2004 (Register 2004, No. 22).

§ 1859.153. Preliminary Apportionment Fund Release.

Once the provisions in Section 1859.148(a)(1) have been met, a district that meets the following may request an advance release of funds from a Preliminary Apportionment:

(a) A district meets the financial hardship criteria in Section 1859.81 is eligible for an amount not to exceed 40 percent of the amount determined in Section 1859.145(a), less any funds pursuant to Section 1859.145(i) and/or (j).

(b) A district that meets the financial hardship criteria in Section 1859.81 is eligible for an amount, not to exceed the Preliminary Apportionment, for site acquisition pursuant to Section 1859.81.1(a), (b) or (c) after submittal of a Form SAB 50–08 pursuant to Section 1859.141.

(c) A district is eligible for an amount, not to exceed the Preliminary Apportionment, for environmental hardship site acquisition pursuant to Section 1859.75.1 after submittal of a Form SAB 50–08 pursuant to Section 1859.141.

Qualified districts may request a separate advance release of funds for the design and for the site acquisition for the same project. A district seeking an advance release of funds pursuant to Section 1859.153(a) and/or (b) must have been approved and maintained financial hardship status pursuant to Section 1859.81. The OPSC will release State funds included in a Preliminary Apportionment pursuant to (a), (b) or (c) to the district after submittal of the Form SAB 50–05. The OPSC shall not release funds in excess of the Preliminary Apportionment. State funds released from a Preliminary Apportionment pursuant to this Section shall be subject to the provisions in Section 1859.148. Once the Preliminary Apportionment is converted to a Final Apportionment pursuant to Section 1859.150, the district may request a release of the remaining funds as prescribed in Section 1859.90.

NOTE: Authority cited: Sections 17070.35 and 17075.15, Education Code. Reference: Sections 17072.30 and 17078.27, Education Code.

HISTORY

1. New section filed 11–4–2002 as an emergency; operative 11–4–2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11–4–2003 or emergency language will be repealed by operation of law on the following day.
2. Amendment filed 5–1–2003 as an emergency; operative 5–1–2003 (Register 2003, No. 18). A Certificate of Compliance must be transmitted to OAL by 8–29–2003 or emergency language will be repealed by operation of law on the following day.
3. Amendment refiled 8–29–2003 as an emergency; operative 8–29–2003 (Register 2003, No. 35). A Certificate of Compliance must be transmitted to OAL by 12–29–2003 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 11–4–2002 order transmitted to OAL 11–4–2003 and filed 12–19–2003 (Register 2003, No. 51).
5. Amendment refiled 12–22–2003 as an emergency; operative 12–22–2003 (Register 2003, No. 52). A Certificate of Compliance must be transmitted to OAL by 4–20–2004 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 12–22–2003 order transmitted to OAL 4–19–2004 and filed 5–25–2004 (Register 2004, No. 22).

§ 1859.154. Fund Distribution.

(a) From the funding made available from Education Code Section 100620(a)(5), the Board shall transfer the amount determined in (3) below, to the SFP New Construction Account after the Preliminary Apportionment(s) are approved by the Board:

(1) Determine the total value of the Preliminary Applications received pursuant to Section 1859.141(a).

(2) Multiply the amount determined in (1) by 15 percent.

(3) Subtract the sum of the amounts determined in (1) and (2) from $1.7 billion. If negative number, the amount is zero.

(b) From the funding made available from Education Code Section 100820(a)(3), the Board shall transfer the amount determined in (3) below, to the SFP New Construction Account after the Preliminary Apportionment(s) are approved by the Board:

(1) Determine the total value of the Preliminary Applications received pursuant to Section 1859.141(b).

(2) Multiply the amount determined in (1) by 15 percent.

(3) Subtract the sum of the amounts determined in (1) and (2) from $2.44 billion. If negative number, the amount is zero.

(c) Any funds remaining in the 2002 (or 2004, as appropriate) Critically Overcrowded School Facilities Account not needed for purposes of converting projects to a Final Apportionment shall be transferred to the SFP New Construction Account.

NOTE: Authority cited: Sections 17070.35 and 17075.15, Education Code. Reference: Sections 17072.27, 17078.30, 100620 and 100820, Education Code.

HISTORY

1. New section filed 11–4–2002 as an emergency; operative 11–4–2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11–4–2003 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 11–4–2002 order transmitted to OAL 11–4–2003 and filed 12–19–2003 (Register 2003, No. 51).

§ 1859.155. Preliminary Apportionment.

The Board shall approve Preliminary Applications from the 2002 (or 2004, as appropriate) Critically Overcrowded School Facilities Account as follows:

(a) If the total amount of the Preliminary Apportionment requests received during the application filing period described in Section 1859.141 are equal to or less than the amount in the 2002 (or 2004, as appropriate) Critically Overcrowded School Facilities Account, the Board shall approve all Preliminary Apportionment requests.

(b) If the total amount of the Preliminary Apportionment requests received during the application filing period described in Section 1859.141 are greater than the amount in the 2002 (or 2004, as appropriate) Critically Overcrowded School Facilities Account, the Board shall approve Preliminary Apportionment in accordance with the funding priorities described in Section 1859.146. Any Preliminary Application that cannot be fully approved shall be returned unprocessed to the district.

All funds approved as a Preliminary Apportionment shall be transferred to the Restricted Fund within the 2002 (or 2004, as appropriate) Critically Overcrowded School Facilities Account. Any funds not approved as a Preliminary Apportionment shall be transferred to the Unrestricted Fund within the 2002 (or 2004, as appropriate) Critically Overcrowded School Facilities Account.

NOTE: Authority cited: Sections 17070.35 and 17075.15, Education Code. Reference: Sections 17078.10, 17078.30, 100620 and 100820, Education Code.

HISTORY

1. New section filed 11–4–2002 as an emergency; operative 11–4–2002 (Register 2002, No. 45). Pursuant to Education Code section 17070.35 a Certificate of Compliance must be transmitted to OAL by 11–4–2003 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 11–4–2002 order transmitted to OAL 11–4–2003 and filed 12–19–2003 (Register 2003, No. 51).

Article 14. Charter School Facilities Program

§ 1859.160. General.

A Charter School seeking a Preliminary Charter School Apportionment pursuant to the provisions of Education Code Sections 17078.52 through 17078.66 for new construction or rehabilitation shall complete and file a Form SAB 50–09. In addition the charter school must provide all required documents necessary for a financial soundness determination.

[The next page is 234.37.]

Once the Board has approved a Preliminary Charter School Apportionment for a Preliminary Charter School Application submitted pursuant to this Section after July 2, 2003, a Charter School seeking an advance release of funds for site acquisition pursuant to Section 1859.164.2(b), shall be required to submit an additional Form SAB 50–09, to the OPSC, to determine eligible site acquisition costs. A Charter School seeking an advance release of funds for design, engineering, and other pre–construction project costs pursuant to Section 1859.164.2(a), shall not be required to submit an additional Preliminary Charter School Application.

NOTE: Authority cited: Sections 17070.35 and 17078.64, Education Code. Reference: Sections 17078.52 and 17078.53, Education Code.

HISTORY

1. New article 14 (sections 1859.160–1859.171) and section filed 2–13–2003 as an emergency pursuant to Education Code section 17078.64(b); operative 2–13–2003 (Register 2003, No. 7). A Certificate of Compliance must be transmitted to OAL by 6–13–2003 or emergency language will be repealed by operation of law on the following day.
2. New article 14 (sections 1859.160–1859.171) and section refiled 6–13–2003 as an emergency; operative 6–13–2003 (Register 2003, No. 24). A Certificate of Compliance must be transmitted to OAL by 10–13–2003 or emergency language will be repealed by operation of law on the following day.
3. New article 14 (sections 1859.160–1859.171) and section refiled 10–9–2003 as an emergency; operative 10–9–2003 (Register 2003, No. 41). A Certificate of Compliance must be transmitted to OAL by 2–6–2004 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 10–9–2003 order, including amendment of section, transmitted to OAL 2–6–2004 and filed 3–23–2004 (Register 2004, No. 13).
5. Amendment filed 6–1–2004 as an emergency; operative 6–1–2004 (Register 2004, No. 23). A Certificate of Compliance must be transmitted to OAL by 9–29–2004 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 6–1–2004 order transmitted to OAL 9–29–2004 and filed 11–10–2004 (Register 2004, No. 46).
7. Amendment of first paragraph filed 5–17–2007; operative 5–17–2007 pursuant to Government Code section 11343.4 (Register 2007, No. 20).

§ 1859.161. Preliminary Charter School Application Submittals.

A Charter School seeking a Preliminary Charter School Apportionment shall complete and submit Form SAB 50–09 between February 2003 and March 31, 2003, or during a period of 120 calendar days beginning 90 calendar days after an election authorizing additional funding.

The Board may establish additional application filing periods as needed.

NOTE: Authority cited: Sections 17070.35 and 17078.64, Education Code. Reference: Section 17078.53, Education Code.

HISTORY

1. New section filed 2–13–2003 as an emergency pursuant to Education Code section 17078.64(b); operative 2–13–2003 (Register 2003, No. 7). A Certificate of Compliance must be transmitted to OAL by 6–13–2003 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 6–13–2003 as an emergency; operative 6–13–2003 (Register 2003, No. 24). A Certificate of Compliance must be transmitted to OAL by 10–13–2003 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 10–9–2003 as an emergency; operative 10–9–2003 (Register 2003, No. 41). A Certificate of Compliance must be transmitted to OAL by 2–6–2004 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 10–9–2003 order transmitted to OAL 2–6–2004 and filed 3–23–2004 (Register 2004, No. 13).
5. Amendment of first paragraph filed 6–1–2004 as an emergency; operative 6–1–2004 (Register 2004, No. 23). A Certificate of Compliance must be transmitted to OAL by 9–29–2004 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 6–1–2004 order transmitted to OAL 9–29–2004 and filed 11–10–2004 (Register 2004, No. 46).
7. Amendment filed 5–17–2007; operative 5–17–2007 pursuant to Government Code section 11343.4 (Register 2007, No. 20).

§ 1859.162. General Preliminary Charter School Apportionment Eligibility Criteria.

A Charter School may apply for a Preliminary Charter School Apportionment by submittal of Form SAB 50–09 if all of the following requirements are met:

(a) Prior to submission of the Preliminary Charter School Application the requirements of EC Sections 17078.53(c) and (e) are met.

(b) Prior to submission of the Preliminary Charter School Application, a Charter School applying on its own behalf must notify the school district where the project will be physically located of its intent to apply. This notification must occur at least 30 days prior to the application submittal. As part of the Preliminary Charter School Application, the Charter School must submit evidence of the date the notification was received by the school district.

(c) The Preliminary Charter School Application shall include a description of the proposed project including, but not limited to, the identification of the number of classrooms, the grade level of the pupils to be served, the intended opening date of the project, the Charter School General Location, and whether the project will be permanent or portable construction.

If a charter school project has already received a Preliminary Charter School Apportionment under the CSFP but would like to re–apply under a future funding cycle, the original Preliminary Charter School Apportionment must be withdrawn by the charter school and rescinded by the Board prior to the submittal of a subsequent application.

NOTE: Authority cited: Sections 17070.35 and 17078.64, Education Code. Reference: Sections 17071.75, 17078.52 and 17078.53, Education Code.

HISTORY

1. New section filed 2–13–2003 as an emergency pursuant to Education Code section 17078.64(b); operative 2–13–2003 (Register 2003, No. 7). A Certificate of Compliance must be transmitted to OAL by 6–13–2003 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 6–13–2003 as an emergency; operative 6–13–2003 (Register 2003, No. 24). A Certificate of Compliance must be transmitted to OAL by 10–13–2003 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 10–9–2003 as an emergency; operative 10–9–2003 (Register 2003, No. 41). A Certificate of Compliance must be transmitted to OAL by 2–6–2004 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 10–9–2003 order transmitted to OAL 2–6–2004 and filed 3–23–2004 (Register 2004, No. 13).
5. Amendment filed 6–1–2004 as an emergency; operative 6–1–2004 (Register 2004, No. 23). A Certificate of Compliance must be transmitted to OAL by 9–29–2004 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 6–1–2004 order transmitted to OAL 9–29–2004 and filed 11–10–2004 (Register 2004, No. 46).
7. Amendment of section and NOTE filed 5–17–2007; operative 5–17–2007 pursuant to Government Code section 11343.4 (Register 2007, No. 20).

§ 1859.162.1. Preliminary Charter School New Construction Apportionment Eligibility Criteria.

For Charter Schools applying on their own behalf, the notification to the school district of the Charter School's intent to apply pursuant to Section 1859.162(b) must include the following:

(a) A request for the school district to provide a certification to the number of the district's unhoused pupils, pursuant to Section 1859.50, that the project will serve. Prior to submitting the certification as part of the Preliminary Charter School Application, the school board must have discussed the issue as an action item at a regularly scheduled, publicly held board meeting. The certification, in the form of a board resolution, and supporting documentation must be submitted to the OPSC within 90 days from the date the Charter School notified the school district of its intent to apply to the CSFP.

(b) A request that the school district update its current year enrollment on file with the OPSC.

NOTE: Authority cited: Sections 17070.35 and 17078.64, Education Code. Reference: Section 17078.53, Education Code.

HISTORY

1. New section filed 2–13–2003 as an emergency pursuant to Education Code section 17078.64(b); operative 2–13–2003 (Register 2003, No. 7). A Certificate of

Compliance must be transmitted to OAL by 6–13–2003 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 6–13–2003 as an emergency; operative 6–13–2003 (Register 2003, No. 24). A Certificate of Compliance must be transmitted to OAL by 10–13–2003 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 10–9–2003 as an emergency; operative 10–9–2003 (Register 2003, No. 41). A Certificate of Compliance must be transmitted to OAL by 2–6–2004 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 10–9–2003 order transmitted to OAL 2–6–2004 and filed 3–23–2004 (Register 2004, No. 13).
5. Amendment of section heading, repealer and new section and amendment of NOTE filed 5–17–2007; operative 5–17–2007 pursuant to Government Code section 11343.4 (Register 2007, No. 20).

§ 1859.162.2. Preliminary Apportionment Eligibility Adjustments for New Construction Projects.

The baseline eligibility for new construction determined by the Form SAB 50–03 of the appropriate school district where the project will be physically located will be decreased based upon the number of unhoused pupils, calculated pursuant to Section 1859.50, the CSFP project will serve as determined by either of the following:

(a) For a Charter School applying on its own behalf, the number of unhoused pupils the project will serve will be determined and certified to by the school district in which the project will be physically located.

(b) For school districts applying on behalf of a Charter School, the school district must indicate the number of unhoused pupils the project will serve. The supporting documentation for arriving at this number must be submitted to the OPSC as part of the Preliminary Charter School Application.

NOTE: Authority cited: Sections 17070.35 and 17078.64, Education Code. Reference: Section 17078.53, Education Code.

HISTORY

1. New section filed 5–17–2007; operative 5–17–2007 pursuant to Government Code section 11343.4 (Register 2007, No. 20).

§ 1859.162.3. Overlapping District Boundaries.

If the Charter School provides or will provide instruction for a combination of grade levels and therefore is or will be located in more than one school district's boundaries (e.g. elementary and high school district, not unified), a separate Form SAB 50–09 indicating the number of unhoused pupils served from each district, as appropriate will be required. Sections 1859.162.1 and 1859.162.2 shall apply to all districts involved in the Preliminary Charter School Apportionment. For the purposes of receiving a Preliminary Charter School Apportionment pursuant to Section 1859.163, the applications will be combined into one to be funded concurrently.

In addition, if the project will be located in an area of overlapping district boundaries but proposes to house only the grade levels served by just one of the districts, the district that serves the same grade levels will be subject to the district related requirements of this article (including, but not limited to holding title to the project, generating overcrowding percentages for preference points and signing the Charter School Agreements).

NOTE: Authority cited: Sections 17070.35 and 17078.64, Education Code. Reference: Sections 17078.53 and 17078.54, Education Code.

HISTORY

1. New section filed 5–17–2007; operative 5–17–2007 pursuant to Government Code section 11343.4 (Register 2007, No. 20).

§ 1859.163. Approval of Applications for Preliminary Charter School Apportionments.

Prior to approving a Preliminary Charter School Apportionment, the Board will require a certification from the Authority that the Charter School is Financially Sound. In providing a Preliminary Charter School Apportionment, the Board shall use the funding criteria established in Section 1859.164. The apportionment provided by the Board may be 100 percent of the total project cost dependent upon the method of Charter School's contribution as determined by the Authority.

NOTE: Authority cited: Sections 17070.35 and 17078.64, Education Code. Reference: Sections 17078.52 and 17078.53, Education Code.

HISTORY

1. New section filed 2–13–2003 as an emergency pursuant to Education Code section 17078.64(b); operative 2–13–2003 (Register 2003, No. 7). A Certificate of Compliance must be transmitted to OAL by 6–13–2003 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 6–13–2003 as an emergency; operative 6–13–2003 (Register 2003, No. 24). A Certificate of Compliance must be transmitted to OAL by 10–13–2003 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 10–9–2003 as an emergency; operative 10–9–2003 (Register 2003, No. 41). A Certificate of Compliance must be transmitted to OAL by 2–6–2004 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 10–9–2003 order transmitted to OAL 2–6–2004 and filed 3–23–2004 (Register 2004, No. 13).
5. Amendment filed 6–1–2004 as an emergency; operative 6–1–2004 (Register 2004, No. 23). A Certificate of Compliance must be transmitted to OAL by 9–29–2004 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 6–1–2004 order transmitted to OAL 9–29–2004 and filed 11–10–2004 (Register 2004, No. 46).

§ 1859.163.1. Preliminary Charter School New Construction Apportionment Determination.

The Preliminary Charter School New Construction Apportionment shall be separated into two categories, items that may be identified as construction costs versus site acquisition costs.

(a) The Preliminary Charter School Apportionment for construction costs shall be equal to the sum of (1) through (9) below:

(1) The amounts shown below for each pupil, based on the project capacity, included in a Preliminary Charter School Application:

(A) $5,227 for each elementary school pupil.

(B) $5,534 for each middle school pupil.

(C) $7,226 for each high school pupil.

(D) $16,653 for each pupil that is a Severely Disabled Individual with Exceptional Needs.

(E) $11,137 for each pupil that is a Non–Severely Disabled Individual with Exceptional Needs.

(2) An amount equal to 12 percent of the amount determined in (1) for multilevel construction, if requested by the Charter School.

(3) An amount for site development cost determined, at the option of the Charter School, by one of the following:

(A) One–half of the site development cost for the specific site as authorized by Section 1859.76.

(B) One–half of the site development cost as authorized by Section 1859.76 using historical information in the Charter School General Location. Historical information that may be considered to determine this estimated cost may include prior SFP projects of the district or other districts in the Charter School General Location.

(C) $70,000 multiplied by the proposed acres requested on the Form SAB 50–09.

(4) General Site Development costs within school property lines for an addition to an existing school site project wherein additional acreage is acquired or a new school project, determined as follows:

(A) $9,600 per proposed acre requested on the Form SAB 50–09. This sum may be increased pursuant to the provisions in Section 1859.83(b). The per acre amount shown above shall be adjusted annually in the manner prescribed in Section 1859.71.

(B) 6 percent for Elementary School Pupils and Middle School Pupils and 3.75 percent for High School Pupils of the funding provided by Sections 1859.163.1(a)(1) multiplied by two. For purposes of this calculation, the percentage amount for Severely Disabled Individuals with Exceptional Needs and Non–Severely Disabled Individuals with Exceptional Needs pupils shall be based on the type of project selected by the Charter School on the Form SAB 50–09.

(C) 6 percent for Elementary School Pupils and Middle School Pupils and 3.75 percent for High School Pupils of the funding provided by Sections 1859.163.1(a)(2) and (5) multiplied by two.

(5) If the Preliminary Application request is for a small project that will house no more than 200 pupils, an amount pursuant to the following:

(A) If the project will house less than 101 pupils, the district is eligible for an amount equal to 12 percent of the funding provided by (a)(1).

(B) If the project will house between 101 and 200 pupils, the district is eligible for an amount equal to four percent of the funding provided by (a)(1).

(6) An amount due to urban location, security requirements and impacted site equal to 15 percent of the amount determined in (1) and (5), plus 1.166 percent for each percentage decrease in the CDE recommended site size below 60 percent when the following criteria are met:

(A) The Charter School has requested an increase for multilevel construction pursuant to (2) above.

(B) The Useable Acres of the existing and/or proposed site are 60 percent or less of the CDE recommended site size.

(C) The value of the property as determined in Section 1859.163.2(a) is at least $750,000 per Useable Acre. This criterion does not apply to an application for an addition to an existing school site.

(7) An amount for the geographic location of the proposed project equal to the sum of the amounts determined in (1), (2), (3)(C), (4)(A) and (B), (5) and (6) multiplied by the indicated percentage factor in the Geographic Percentage Chart shown in Section 1859.83(a).

(8) For all Preliminary Apportionments received after February 23, 2005, an amount equal to the sum of the amounts determined in (1) through (6) multiplied by a factor determined as follows:

(A) Divide the January Class B Construction Cost Index in effect at the time of the Preliminary Apportionment by the January Class B Construction Cost Index in effect four years prior to the Preliminary Apportionment. Round to four decimal places.

(B) Subtract 1 from the quotient in (A). Round to two decimal places.

(9) Fifty percent of the amount to initiate and enforce a LCP as prescribed in Section 1859.71.4, if required by the Labor Code.

(10) If the Charter School is paying its matching share through the form of lease payments, pursuant to Section 1859.168, the value of the lease as determined by the Authority attributable to the items in (1) through (9) above.

(b) The Preliminary Charter School Apportionment for site acquisition costs shall be:

(1) Equal to one-half of the site acquisition value determined in Section 1859.163.2(a) and (c).

(2) If the Charter School is paying its matching share through the form of lease payments, pursuant to Section 1859.168, the value of the lease as determined by the Authority attributable to (1) above.

(c) The total amount calculated in (a) above will be added to any amount calculated in (b) above, which will provide the Preliminary Charter School Apportionment amount.

The amounts shown in (a)(1) shall be adjusted annually in the manner prescribed in Section 1859.71.

Subsection (a)(4) of this section shall be suspended no later than January 1, 2008, unless otherwise extended by amendments as adopted by the Board.

NOTE: Authority cited: Sections 17070.35 and 17078.64, Education Code. Reference: Sections 17078.52 and 17078.58, Education Code.

HISTORY

1. New section filed 6-1-2004 as an emergency; operative 6-1-2004 (Register 2004, No. 23). A Certificate of Compliance must be transmitted to OAL by 9-29-2004 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 6-1-2004 order, including amendment of subsections (a) and (b), transmitted to OAL 9-29-2004 and filed 11-10-2004 (Register 2004, No. 46).
3. Amendment of subsection (a), new subsection (a)(7) and subsection renumbering filed 12-20-2004 as an emergency; operative 12-20-2004 (Register 2004, No. 52). A Certificate of Compliance must be transmitted to OAL by 4-19-2005 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 12-20-2004 order transmitted to OAL 4-19-2005 and filed 5-12-2005 (Register 2005, No. 19).
5. Amendment filed 9-5-2006 as an emergency; operative 9-5-2006 (Register 2006, No. 36). A Certificate of Compliance must be transmitted to OAL by 1-3-2007 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 9-5-2006 order transmitted to OAL 1-3-2007 and filed 2-16-2007 (Register 2007, No. 7).
7. Amendment of section heading, section and NOTE filed 5-17-2007; operative 5-17-2007 pursuant to Government Code section 11343.4 (Register 2007, No. 20).

§ 1859.163.2. Preliminary Charter School Apportionment Site Acquisition Value.

If the Preliminary Charter School Application includes a request for site acquisition funding, the preliminary value of the proposed site shall be the sum of the following:

(a) The value of the property determined by one of the following:

(1) By an appraisal or a preliminary appraisal of the property made no more than six months prior to the date the Preliminary Charter School Application was submitted to the OPSC, using the guidelines outlined in Section 1859.74.1. The preliminary appraisal may be made without access to the property.

(2) The Median Cost of an acre of land in the Charter School General Location using historical information in the Charter School General Location multiplied by the number of proposed Useable Acres requested on Form SAB 50-09. Historical information that may be considered to determine land cost shall include prior real-estate sales consummated and documented by the county recorder or pending real-estate sales documented by a title insurance company's escrow instructions. For purposes of historical information include all real-estate sales consummated and documented by the county recorder for a minimum of six months and a maximum of up to two years prior to the date the Preliminary Charter School Application was submitted to the OPSC.

(b) An amount for the estimated relocation cost and the estimated DTSC costs for review, approval and oversight of the POESA and the PEA as determined by one of the following:

(1) 15 percent of the value determined in (a).

(2) The sum of the following:

(A) The approved relocation expenses for the specific site to be acquired that conform to Title 25, California Code of Regulations, Section 6000, et. seq.

(B) The DTSC cost for review, approval, and oversight of the POESA and the PEA for the specific site to be acquired.

(3) The estimated relocation cost and the estimated DTSC costs for review, approval and oversight of the POESA and the PEA using historical information in the Charter School General Location. Historical information that may be considered to determine these estimated costs may include prior real-estate acquisitions of the district or other districts in the Charter School General Location.

(c) Four percent of the amount determined in (a), but not less than $50,000. This amount shall provide an allowance of any appraisal, escrow, survey, site testing, CDE review/approvals and preparation of the POESA and the PEA.

(d) For allowable costs of hazardous material/waste removal and remediation costs, up to one-half times the value of the property determined in either (a)(1) or (a)(2) above.

NOTE: Authority cited: Sections 17070.35 and 17078.64, Education Code. Reference: Section 17078.52, Education Code.

HISTORY

1. New section filed 6-1-2004 as an emergency; operative 6-1-2004 (Register 2004, No. 23). A Certificate of Compliance must be transmitted to OAL by 9-29-2004 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 6-1-2004 order, including amendment of subsection (b)(3), transmitted to OAL 9-29-2004 and filed 11-10-2004 (Register 2004, No. 46).
3. Amendment of NOTE filed 5-17-2007; operative 5-17-2007 pursuant to Government Code section 11343.4 (Register 2007, No. 20).

§ 1859.163.3. Establishment of Funds for Relocation/DTSC Fee and Hazardous Material/Waste Removal.

For Preliminary Charter School Apportionments awarded on February 23, 2005, the Board shall establish two separate funds from the funding provided through the 2004 Bond for the site acquisition values calculated pursuant to costs provided in Section 1859.163.2(b) and (d) that will not be part of the Preliminary Charter School Apportionment determined in Section 1859.163.1. The amount to reserve for the funds will be determined as follows:

Relocation/DTSC Fee Fund

(a) For all projects requesting an additional grant for relocation and DTSC costs on the Form SAB 50–09 pursuant to Section 1859.163.2(b), the value of each property as determined in Section 1859.163.2(a) will be added. The sum would then be multiplied by 15 percent. The product would provide the dollar value to be reserved, but shall not be less than $2.75 million.

Hazardous Material/Waste Removal Fund

(b) For all projects requesting an additional grant for hazardous material/waste removal and remediation costs provided pursuant to Section 1859.163.2(d), the value of each property as determined in Section 1859.163.2(a) will be added. The sum would then be multiplied by 10 percent. The product would provide the dollar value to be reserved, but shall not be less than $2.5 million.

Any Charter School that received a Preliminary Charter School Apportionment on February 23, 2005 that is requesting a Final Charter School Apportionment may request the funding provided in (a) and/or (b) above when the Form SAB 50–04 is submitted. At the time of Final Charter School Apportionment, should insufficient funds remain in either the Relocation/DTSC Fee Fund or Hazardous Material/Waste Removal Fund to fully apportion those site acquisition costs, any amount not apportioned by the Board for relocation, DTSC fees, or hazardous material waste removal or remediation shall be placed on an Unfunded List in Board date approval order. Any funds returned to the Unrestricted Charter School Fund pursuant to Section 1859.167(b) shall be used by the Board to fund projects remaining on the Unfunded List.

NOTE: Authority cited: Sections 17070.35 and 17078.64, Education Code. Reference: Section 17078.56, Education Code.

HISTORY

1. New section filed 6–1–2004 as an emergency; operative 6–1–2004 (Register 2004, No. 23). A Certificate of Compliance must be transmitted to OAL by 9–29–2004 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 6–1–2004 order, including amendment of subsection (b), transmitted to OAL 9–29–2004 and filed 11–10–2004 (Register 2004, No. 46).
3. Amendment of first and last paragraphs filed 5–17–2007; operative 5–17–2007 pursuant to Government Code section 11343.4 (Register 2007, No. 20).
4. Amendment of first and last paragraphs filed 10–3–2007; operative 10–3–2007 pursuant to Government Code section 11343.4 (Register 2007, No. 40).

§ 1859.163.4. Preliminary Charter School Rehabilitation Apportionment Eligibility Criteria.

A Charter School or School District may apply for a Preliminary Charter School Rehabilitation Apportionment by submittal of Form SAB 50–09 if all of the following requirements are met:

(a) The application includes existing school buildings made available by a school district; and,

(b) The application includes classrooms that are at least 15 years of age at the time of submittal; and,

(c) The facilities included in the application were not previously built or modernized with SFP funds; and,

(d) For a Charter School applying on its own behalf, the application must include an agreement between the school district and the charter school for the use of the facilities to be rehabilitated. The agreement must have been approved prior to submittal of application and must have been discussed and approved at the school district board meeting.

The age of the facilities shall begin 12 months after the plans for the building were approved by the DSA; or in the case of facilities that were previously modernized under the LPP, the 15 year old period shall begin on the date of its previous modernization apportionment.

NOTE: Authority cited: Sections 17070.35 and 17078.64, Education Code. Reference: Sections 17078.54 and 17078.58, Education Code.

HISTORY

1. New section filed 5–17–2007; operative 5–17–2007 pursuant to Government Code section 11343.4 (Register 2007, No. 20).

§ 1859.163.5. Preliminary Charter School Rehabilitation Apportionment Determination.

The Preliminary Charter School Rehabilitation Apportionment will be determined based on the eligible square footage included in the project. For purposes of the Preliminary Charter School Rehabilitation Apportionment, eligible square footage is defined as the total enclosed exterior square footage of the school buildings. For multilevel buildings, include the square footage at each level.

The amount of funding for each Preliminary Charter School Rehabilitation Apportionment will be equal to the sum of the amounts determined in (a) through (g) below:

(a) The lesser of the amount determined in (1) or (2) below:

(1) The dollar value calculated using a per square foot amount and the total eligible square footage for the site as follows:

(A) Determine the total square footage for each classroom included in the project (limited by the Charter School's projected enrollment).

(B) Determine the total square footage for any multi–purpose room included in the project.

(C) Determine the total square footage for any gymnasium included in the project.

(D) Determine the total square footage for any library included in the project.

(E) Determine the total square footage for any administration building included in the project.

(F) Add the total square footage in (A) through (E) above to obtain the total square footage for the project.

(G) From the total determined in (F), determine the total square footage for toilet facilities and the total square footage for other facilities. Multiply the toilet facilities square footage by $173.30 and the other facilities square footage by $96.30. The sum of these figures is the square footage dollar value for the project.

(2) The dollar value calculated using the new construction grant amount and the project capacity based on the State loading standards as follows:

(A) Determine the proposed grade level usage of each classroom in the project (limited by the Charter School's projected enrollment).

(B) Multiply the number of classrooms at the K–6 grade level by 25, the number of classrooms at the 7–12 grade level by 27, the number of non–severe classrooms by 13, and the number of severe classrooms by 9.

(C) Multiply the number of pupils calculated pursuant to (B) by the appropriate dollar value determined in Section 1859.163.1(a)(1).

(b) If the Preliminary Application request is for a small project that will house no more than 200 pupils, an amount pursuant to the following:

(1) If the project will house less than 101 pupils, the district is eligible for an amount equal to 12 percent of the funding provided by (a).

(2) If the project will house between 101 and 200 pupils, the district is eligible for an amount equal to four percent of the funding provided by (a).

(c) An amount due to urban location, security requirements and impacted site equal to 15 percent of the amount determined in (a) and (b), plus for a project with a site that is 60 percent or less of the CDE recommended site size plus 0.333 percent for each percentage decrease in the CDE recommended site size below 60 percent.

(d) An amount for the geographic location of the proposed project equal to the sum of the amounts determined in (a), (b), (c), and (e) multiplied by the indicated percentage factor in the Geographic Percentage Chart shown in Section 1859.83(a).

(e) $60,000 for each new two-stop elevator required to be included in the project by the DSA, and $10,800 for each additional stop.

(f) For all Preliminary Apportionments received after February 23, 2005, an amount equal to the sum of the amounts determined in (a) through (e) multiplied by a factor determined as follows:

(1) Divide the January Class B Construction Cost Index in effect at the time of the Preliminary Apportionment by the January Class B Construction Cost Index in effect four years prior to the Preliminary Apportionment. Round to four decimal places.

(2) Subtract 1 from the quotient in (1). Round to two decimal places.

(g) An amount to initiate and enforce a LCP as prescribed in Section 1859.71.4, if required by the Labor Code.

(h) If the Charter School is paying its matching share through the form of lease payments, pursuant to Section 1859.168, the value of the lease as determined by the Authority attributable to the items in (a) through (g) above.

The amounts determined in (a) and (e) shall be adjusted annually in the manner prescribed in Section 1859.71.

NOTE: Authority cited: Sections 17070.35 and 17078.64, Education Code. Reference: Sections 17071.25, 17078.52, 17078.54 and 17078.58, Education Code.

HISTORY

1. New section filed 5-17-2007; operative 5-17-2007 pursuant to Government Code section 11343.4 (Register 2007, No. 20).

§ 1859.163.6. Preliminary Charter School Rehabilitation Apportionment Eligibility for Sites Previously Funded Under the SFP Modernization Program.

For school sites that have established eligibility and received funding for all or some of the eligible buildings, but have not exhausted all of the eligibility, the site may be eligible for CSFP rehabilitation funds, subject to Board approval. However, the rehabilitation apportionment will be offset by the previous amount of modernization funding received for the building(s) to be rehabilitated at the time of the final apportionment.

NOTE: Authority cited: Sections 17070.35 and 17078.64, Education Code. Reference: Sections 17078.52, 17078.54 and 17078.58, Education Code.

HISTORY

1. New section filed 5-17-2007; operative 5-17-2007 pursuant to Government Code section 11343.4 (Register 2007, No. 20).

§ 1859.163.7. Eligible Use of Charter School Facilities Program Rehabilitation Funds.

Funds Apportioned under the Charter School Facilities Program for Rehabilitation projects are to be used for work consistent with the definition of Charter School Facilities Program Rehabilitation. If the rehabilitation project includes reconfiguration of an existing building and the project decreases the district's capacity at the site or displaces a minimum essential facility, the original capacity and minimum essential facility will still be considered to be in existence. Furthermore, State funding may not be used to replace the capacity or the original minimum essential facility in the future.

NOTE: Authority cited: Sections 17070.35 and 17078.64, Education Code. Reference: Sections 17078.52, 17078.54 and 17078.58, Education Code.

HISTORY

1. New section filed 5-17-2007; operative 5-17-2007 pursuant to Government Code section 11343.4 (Register 2007, No. 20).

§ 1859.164. Application Funding Criteria.

If the estimated total apportionments of all Financially Sound Preliminary Charter School Applications received in either filing period specified in Section 1859.161 exceed the funds available, the applications shall be identified in each of the following four categories:

(a) Geographical Region One, Two, Three, or Four.

(b) Urban, Rural, or Suburban areas.

(c) Large, Medium, or Small Charter Schools.

(d) K-6, 7-8, or 9-12 grade levels.

The Board shall first apportion one project of each possible type, a maximum of four in category (a) and a maximum of three in categories (b) through (d), starting with (a) and continuing through (d). If more than one application is received of the same type within a category, the Board will apportion based on which project has the highest preference points, calculated in Section 1859.164.1. If a project has the highest preference points but was previously apportioned, the project with the next highest preference points will be apportioned. The same process will continue for the remaining categories until the Board has apportioned a project within each type in categories (a) through (d), or until no funding remains. If after funding one project in each category (a) through (d), funding remains available, the process shall be repeated until no funding remains.

All funds approved as a Preliminary Charter School Apportionment shall be transferred to the Restricted Charter School Fund within the appropriate Charter School Facility Account. Any funds not approved as a Preliminary Charter School Apportionment shall be transferred to the Unrestricted Charter School Fund within the appropriate Charter School Facility Account.

All Preliminary Charter School Applications received from a Charter School will be processed in the date order received by the OPSC. If more than one Preliminary Charter School Application is received on the same day from the same entity for a Charter School project located within the geographical jurisdiction of same district, those applications will be processed by the OPSC based on the priority order assigned to those applications by the applicant on Form SAB 50-09.

If two or more Preliminary Charter School Applications have the same preference points, the Board shall first apportion that Preliminary Charter School Application that was received first by the OPSC. In the event that the applications were received on the same day, applications will be funded in the following order:

(a) Projects submitted by entities that have not previously received funding under the SFP, the CSFP or the State Charter School Facilities Grants Incentives Program will be funded before those that have received said funding;

(b) Projects proposing to utilize existing facilities will be funded before projects that propose to build new facilities;

(c) As applicable, projects that provide more seats to relieve overcrowding will be funded over those that provide fewer seats (as determined by dividing the number of unhoused pupils pursuant to Section 1859.50 that the project will house by the remaining new construction eligibility in the district);

In the event that a tie remains after the previous criteria have been applied, a lottery system will be used to select the project that is funded.

Any applications the SAB is unable to provide a Preliminary Charter School Apportionment to will be returned to the Charter School.

NOTE: Authority cited: Sections 17070.35 and 17078.64, Education Code. Reference: Section 17078.56, Education Code.

HISTORY

1. New section filed 2-13-2003 as an emergency pursuant to Education Code section 17078.64(b); operative 2-13-2003 (Register 2003, No. 7). A Certificate of Compliance must be transmitted to OAL by 6-13-2003 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 6-13-2003 as an emergency; operative 6-13-2003 (Register 2003, No. 24). A Certificate of Compliance must be transmitted to OAL by 10-13-2003 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 10-9-2003 as an emergency; operative 10-9-2003 (Register 2003, No. 41). A Certificate of Compliance must be transmitted to OAL by 2-6-2004 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 10-9-2003 order transmitted to OAL 2-6-2004 and filed 3-23-2004 (Register 2004, No. 13).
5. Amendment of subsection (d) filed 6-1-2004 as an emergency; operative 6-1-2004 (Register 2004, No. 23). A Certificate of Compliance must be transmitted to OAL by 9-29-2004 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 6-1-2004 order transmitted to OAL 9-29-2004 and filed 11-10-2004 (Register 2004, No. 46).
7. Amendment filed 5-17-2007; operative 5-17-2007 pursuant to Government Code section 11343.4 (Register 2007, No. 20).

§ 1859.164.1. Calculation of Preference Points.

Preference points will be calculated for all Preliminary Charter School Applications. An application shall receive preference points based on the total of (a), (b), (c) and (d), up to a maximum of 160 points, as follows:

(a) Low Income: Up to 40 points based on the percentage of pupils at either the Charter School or school district where the Charter School is or will be located, or any public school within the Charter School General Location meeting the definition of Low-income. The Charter School may report the highest percentage of the three. Use the following sliding scale to determine the number of preference points:

Percentage Receiving Free/Reduced Lunch	*Preference Points Assigned*
5–15%	4
16–30%	8
31–39%	12
40–47%	16
48–55%	20
56–64%	24
65–73%	28
74–82%	32
83–92%	36
93	36.5
94	37
95	37.5
96	38
97	38.5
98	39
99	39.5
100	40

(b) Overcrowded School District: Up to 40 points if the school district where the Charter School is physically located is determined to be overcrowded by dividing the remaining New Construction Eligibility (prior to the reduction from this application) by the district's current enrollment and multiplying the product by 100. The following sliding scale determines the maximum number of preference points available for the degree of overcrowding:

Percentage Overcrowded	*Preference Points Assigned*
2–9%	4
10–13%	8
14–16%	12
17–19%	16
20–22%	20
23–25%	24
26–33%	28
34–41%	32
42–49%	36
50% and above	40

The method of allocating preference points to applicants will utilize the percentage overcrowded chart for a maximum point distribution. Next, each application will be assigned an "effort" percentage which further allocates points within each overcrowding point category. The percentage generated by the number of unhoused pupils that the project will house, divided by the project capacity will represent the effort made to relieve overcrowding in the district. The "effort" percentage will be assigned the following point distribution:

% Effort to Relieve Overcrowding	*Ratio of Overcrowded Points Awarded*
40% or more	100% of the points for the overcrowded category
30–39%	90% of the points for the overcrowded category
20–29%	80% of the points for the overcrowded category
10–19%	70% of the points for the overcrowded category
1–9%	60% of the points for the overcrowded category
0	No points for the overcrowded category

The total points assigned for overcrowding will be calculated by applying the appropriate "effort" percentage and its corresponding ratio of points to the percentage overcrowded category for the district in which the project will be physically located.

(c) Non-Profit Entity: If the entity operating the Charter School meets the definition of a Non-Profit Entity, the project will receive 40 preference points.

(d) Existing Facilities: If the project proposes to rehabilitate existing facilities, the project will receive 40 preference points.

NOTE: Authority cited: Sections 17070.35 and 17078.64, Education Code. Reference: Sections 17078.53 and 17078.56, Education Code.

HISTORY

1. New section filed 2–13–2003 as an emergency pursuant to Education Code section 17078.64(b); operative 2–13–2003 (Register 2003, No. 7). A Certificate of Compliance must be transmitted to OAL by 6–13–2003 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 6–13–2003 as an emergency; operative 6–13–2003 (Register 2003, No. 24). A Certificate of Compliance must be transmitted to OAL by 10–13–2003 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 10–9–2003 as an emergency; operative 10–9–2003 (Register 2003, No. 41). A Certificate of Compliance must be transmitted to OAL by 2–6–2004 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 10–9–2003 order transmitted to OAL 2–6–2004 and filed 3–23–2004 (Register 2004, No. 13).
5. Amendment of subsections (a) and (b) filed 6–1–2004 as an emergency; operative 6–1–2004 (Register 2004, No. 23). A Certificate of Compliance must be transmitted to OAL by 9–29–2004 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 6–1–2004 order transmitted to OAL 9–29–2004 and filed 11–10–2004 (Register 2004, No. 46).
7. Amendment of section and NOTE filed 5–17–2007; operative 5–17–2007 pursuant to Government Code section 11343.4 (Register 2007, No. 20).

§ 1859.164.2. Preliminary Charter School Apportionment Fund Release.

A Charter School receiving a Preliminary Charter School Apportionment from the Board after July 2, 2003 may request an advance release of funds for either of the following:

(a) A separate advance release of funds for design equal to 20 percent of the amount determined in Section 1859.163.1(a)(1) through (9) or Section 1859.163.5(a) through (g).

(b) A separate advance release of funds for site acquisition once the requirements in Section 1859.81(a)(2) and (3) are met for an amount not to exceed the Preliminary Charter School Apportionment for site acquisition. The Board shall release to the Charter School an amount up to the Preliminary Charter School Apportionment determined in Section 1859.163.1(b).

Qualified Charter Schools may request a separate advance release of funds for the design and for the site acquisition for the same project. A Charter School seeking an advance release of funds pursuant to (a) and/or (b) must have been deemed and maintained financial soundness status from the Authority. The OPSC will release State funds included in a Preliminary Charter School Apportionment pursuant to (a) or (b) to the Charter School after submittal of the Form SAB 50–05. The OPSC shall not release funds in excess of the Preliminary Charter School Apportionment. State funds released from a Preliminary Charter School Apportionment pursuant to this Section shall be subject to the provisions in Section 1859.166. Once the Preliminary Charter School Apportionment is converted to a Final Charter School Apportionment pursuant to Section 1859.167, the Charter School may request a release of the remaining funds as prescribed in Section 1859.90. Prior to the release of any funds, the Charter School Agreements must be executed.

NOTE: Authority cited: Sections 17070.35 and 17078.64, Education Code. Reference: Sections 17078.53 and 17078.58, Education Code.

HISTORY

1. New section filed 6–1–2004 as an emergency; operative 6–1–2004 (Register 2004, No. 23). A Certificate of Compliance must be transmitted to OAL by 9–29–2004 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 6–1–2004 order transmitted to OAL 9–29–2004 and filed 11–10–2004 (Register 2004, No. 46).
3. Amendment of subsection (a) filed 12–20–2004 as an emergency; operative 12–20–2004 (Register 2004, No. 52). A Certificate of Compliance must be transmitted to OAL by 4–19–2005 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 12–20–2004 order transmitted to OAL 4–19–2005 and filed 5–12–2005 (Register 2005, No. 19).
5. Amendment of section and NOTE filed 5–17–2007; operative 5–17–2007 pursuant to Government Code section 11343.4 (Register 2007, No. 20).

§ 1859.165. Conversion of Preliminary Charter School Apportionment.

When a Preliminary Charter School Apportionment is converted to a Final Charter School Apportionment, all the following criteria must be met:

(a) The Final Charter School Apportionment request must meet all criteria on the Form SAB 50–04.

(b) A Charter School seeking to convert a Preliminary Charter School Apportionment to a Final Charter School Apportionment shall complete and file Form SAB 50–04. The number of pupils being requested cannot exceed the amount the Charter School originally requested and received at the Preliminary Charter School Apportionment.

If the Charter School is unable to meet the criteria in this Section, the Preliminary Charter School Apportionment shall be rescinded pursuant to the provisions of Section 1859.166.

NOTE: Authority cited: Sections 17070.35 and 17078.64, Education Code. Reference: Section 17078.52, Education Code.

HISTORY

1. New section filed 2–13–2003 as an emergency pursuant to Education Code section 17078.64(b); operative 2–13–2003 (Register 2003, No. 7). A Certificate of Compliance must be transmitted to OAL by 6–13–2003 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 6–13–2003 as an emergency; operative 6–13–2003 (Register 2003, No. 24). A Certificate of Compliance must be transmitted to OAL by 10–13–2003 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 10–9–2003 as an emergency; operative 10–9–2003 (Register 2003, No. 41). A Certificate of Compliance must be transmitted to OAL by 2–6–2004 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 10–9–2003 order transmitted to OAL 2–6–2004 and filed 3–23–2004 (Register 2004, No. 13).
5. Amendment of subsection (b) filed 6–1–2004 as an emergency; operative 6–1–2004 (Register 2004, No. 23). A Certificate of Compliance must be transmitted to OAL by 9–29–2004 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 6–1–2004 order transmitted to OAL 9–29–2004 and filed 11–10–2004 (Register 2004, No. 46).
7. Amendment of subsection (a) filed 5–17–2007; operative 5–17–2007 pursuant to Government Code section 11343.4 (Register 2007, No. 20).

§ 1859.166. Time Limit on Preliminary Charter School Apportionment.

(a) A complete request to convert a Preliminary Charter School Apportionment to a Final Charter School Apportionment pursuant to Section 1859.165 shall be made within four years of the date of the Preliminary Charter School Apportionment unless the Charter School received approval of an extension pursuant to Section 1859.166.1.

(b) If (a) is not met, and the Charter School has not received an advance release of funds as provided in Section 1859.164.2, the following will occur:

(1) the Preliminary Charter School Apportionment shall be rescinded and any remaining Preliminary Charter School Apportionment, not released to the Charter School, shall be transferred to the Unrestricted Charter School Fund within the appropriate Charter School Facility Account, and;

(2) the SFP New Construction Eligibility will be increased by the number of unhoused pupils pursuant to Section 1859.162.2 for the school district that physically contains the Charter School within its geographical boundaries.

(c) If (a) is not met, and the Charter School has received an advance release of funds as provided in Section 1859.164.2, the following will occur:

(1) The Preliminary Charter School Apportionment shall be rescinded and any remaining Preliminary Charter School Apportionment, not released to the Charter School, shall be transferred to the Unrestricted Charter School Fund within the appropriate Charter School Facility Account, and;

(2) Funds released pursuant to Section 1859.164.2(a) shall be reduced to cost incurred and closed–out pursuant to Section 1859.106 with a corresponding SFP new construction baseline eligibility adjustment for the pupils assigned to the Preliminary Charter School Application. The adjustment to the baseline eligibility shall be based on the ratio of the number of unhoused pupils pursuant to Section 1859.162.2 and the project capacity which generated the project funding to the eligible expenditures. Any funds released are subject to the fifty percent local matching share requirement as required by EC 17078.54(d). Funds returned pursuant to Section 1859.106 shall be transferred to the Unrestricted Charter School Fund within the appropriate Charter School Facility Account, and;

(3) Funds released pursuant to Section 1859.164.2(b) shall be subject to the provisions of Section 1859.171.

NOTE: Authority cited: Sections 17070.35 and 17078.64, Education Code. Reference: Sections 17078.52 and 17078.53, Education Code.

HISTORY

1. New section filed 2–13–2003 as an emergency pursuant to Education Code section 17078.64(b); operative 2–13–2003 (Register 2003, No. 7). A Certificate of Compliance must be transmitted to OAL by 6–13–2003 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 6–13–2003 as an emergency; operative 6–13–2003 (Register 2003, No. 24). A Certificate of Compliance must be transmitted to OAL by 10–13–2003 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 10–9–2003 as an emergency; operative 10–9–2003 (Register 2003, No. 41). A Certificate of Compliance must be transmitted to OAL by 2–6–2004 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 10–9–2003 order transmitted to OAL 2–6–2004 and filed 3–23–2004 (Register 2004, No. 13).
5. Amendment of subsection (b) and new subsections (b)(1)–(c)(3) filed 6–1–2004 as an emergency; operative 6–1–2004 (Register 2004, No. 23). A Certificate of Compliance must be transmitted to OAL by 9–29–2004 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 6–1–2004 order transmitted to OAL 9–29–2004 and filed 11–10–2004 (Register 2004, No. 46).
7. Amendment of subsections (b)(2) and (c)(2) filed 5–17–2007; operative 5–17–2007 pursuant to Government Code section 11343.4 (Register 2007, No. 20).

§ 1859.166.1. Preliminary Charter School Apportionment Time Limit Extension.

A Charter School that has received a Preliminary Charter School Apportionment may request a single one–year extension of the time limit prescribed in Section 1859.166(a). The Board shall approve the request provided the criteria in (a) or (b) are met:

(a) The Charter School has provided evidence of both of the following:

(1) The CDE has made a contingent or final approval of the proposed site; and,

(2) The DSA has confirmed that the final plans for the project have been submitted to the DSA for review and approval.

(b) Other evidence satisfactory to the Board justifying the extension.

NOTE: Authority cited: Sections 17070.35 and 17078.64, Education Code. Reference: Section 17078.52, Education Code.

HISTORY

1. New section filed 2–13–2003 as an emergency pursuant to Education Code section 17078.64(b); operative 2–13–2003 (Register 2003, No. 7). A Certificate of Compliance must be transmitted to OAL by 6–13–2003 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 6–13–2003 as an emergency; operative 6–13–2003 (Register 2003, No. 24). A Certificate of Compliance must be transmitted to OAL by 10–13–2003 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 10–9–2003 as an emergency; operative 10–9–2003 (Register 2003, No. 41). A Certificate of Compliance must be transmitted to OAL by 2–6–2004 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 10–9–2003 order transmitted to OAL 2–6–2004 and filed 3–23–2004 (Register 2004, No. 13).

§ 1859.167. Final Charter School Apportionment.

(a) With the exception of Charter School Preliminary Apportionments provided by the Board on February 23, 2005, the amount of the Final Charter School Apportionment will be based on the provisions of any amended or new regulations that are effective at the time the Form SAB 50–04, for the Final Charter School Apportionment is submitted and accepted for processing by the OPSC. Prior to the Board providing a Final Charter School Apportionment, the Charter School will need to have a current Financial Soundness certification from the Authority. The Board shall convert the amounts determined below from the Preliminary Charter School Apportionment to the Final Charter School Apportionment:

(1) If the Final Charter School Apportionment request is equal to or less than the Preliminary Charter School Apportionment, the Final Charter School Apportionment shall be funded entirely. The difference in the

Final Charter School Apportionment and the Preliminary Charter School Apportionment shall be transferred to the Unrestricted Charter School Fund in the appropriate Charter School Facilities Account. The Final Charter School Apportionment shall become the full and final apportionment for the project.

(2) If the Final Charter School Apportionment request is greater than the Preliminary Charter School Apportionment, the Board shall convert the Preliminary Charter School Apportionment to a Final Charter School Apportionment by either of the following:

(A) If the balance in the Unrestricted Charter School Fund in the appropriate Charter School Facilities Account is greater than the difference in the Final Charter School Apportionment and the Preliminary Charter School Apportionment, fund the Final Charter School Apportionment entirely. The Final Charter School Apportionment shall become the full and final apportionment for the project.

(B) If the balance in the Unrestricted Charter School Fund in the appropriate Charter School Facilities Account is less than the difference in the Final Charter School Apportionment and the Preliminary Charter School Apportionment, fund the Final Charter School Apportionment using any remaining balance in the Unrestricted Charter School Fund in the appropriate Charter School Facilities Account. The Final Charter School Apportionment shall become the full and final apportionment for the project.

(b) For Preliminary Charter School Apportionments provided by the Board on February 23, 2005:

(1) the Final Charter School Apportionment will be subject to the provisions of any amended or new regulations that are effective at the time the Form SAB 50–04 is submitted and accepted for processing by the OPSC for the Final Charter School Apportionment; and,

(2) The Final Charter School Apportionment shall not contain additional pupil grants beyond that which the Charter School may have requested at the time of the Preliminary Charter School Application; and,

(3) Prior to the Board providing a Final Charter School Apportionment the Charter School will need to have a current Financial Soundness certification from the Authority; and,

(4) The amount of the Final Charter School Apportionment shall not exceed the Preliminary Charter School Apportionment with the exception of amounts available pursuant to Section 1859.167.2 and 1859.167.3. The additional amount of funds available to an individual project may include amounts from both the Conversion Increase Fund and Unrestricted Charter School Fund. The sum of the Preliminary Apportionment, the additional funds from the Conversion Increase Fund, and the additional amounts from the Unrestricted Charter School Fund shall not exceed the amount necessary to bring the total eligible project costs current to the grant amounts in place at the time of conversion. The Board shall convert the Preliminary Charter School Apportionment to the Final Charter School Apportionment as outlined below:

(A) If the Preliminary Charter School Apportionment is greater than the Final Charter School Apportionment request then the difference shall be used to return the Relocation/DTSC Fund and the Hazardous Material/Waste Removal Fund to the amounts originally reserved for these purposes. The amount returned to the Relocation/DTSC Fund shall be equal to 83.6 percent of the amount available for return; the amount returned to the Hazardous Material/Waste Removal Fund shall be equal to 16.4 percent of the amount available for return. Once these funds have been replenished, any remaining funds shall be transferred to the Unrestricted Charter School Fund in the 2004 Charter School Facilities Account. The Final Charter School Apportionment shall become the full and final apportionment for the project.

(B) If the project is eligible for an additional grant for relocation expenses, DTSC fees, or hazardous waste removal pursuant to Sections 1859.74 or 1859.74.2, the Preliminary Charter School Apportionment may be increased accordingly using the funding set aside in Section 1859.163.3.

(C) If the Preliminary Charter School Apportionment plus the additional amounts provided from the Conversion Increase Fund and the Unrestricted Charter School Fund is less than the Final Charter School Apportionment request, the difference shall be placed on an Unfunded List.

NOTE: Authority cited: Sections 17070.35 and 17078.64, Education Code. Reference: Sections 17078.52 and 17078.56, Education Code.

HISTORY

1. New section filed 2–13–2003 as an emergency pursuant to Education Code section 17078.64(b); operative 2–13–2003 (Register 2003, No. 7). A Certificate of Compliance must be transmitted to OAL by 6–13–2003 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 6–13–2003 as an emergency; operative 6–13–2003 (Register 2003, No. 24). A Certificate of Compliance must be transmitted to OAL by 10–13–2003 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 10–9–2003 as an emergency; operative 10–9–2003 (Register 2003, No. 41). A Certificate of Compliance must be transmitted to OAL by 2–6–2004 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 10–9–2003 order transmitted to OAL 2–6–2004 and filed 3–23–2004 (Register 2004, No. 13).
5. Amendment of section and NOTE filed 6–1–2004 as an emergency; operative 6–1–2004 (Register 2004, No. 23). A Certificate of Compliance must be transmitted to OAL by 9–29–2004 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 6–1–2004 order transmitted to OAL 9–29–2004 and filed 11–10–2004 (Register 2004, No. 46).
7. Amendment filed 2–16–2007; operative 2–16–2007 (Register 2007, No. 7).
8. Amendment of subsections (a)–(a)(1), (a)(2)(A)–(B), (b), (b)(2)–(3), (b)(6)–(b)(6)(A) and (b)(6)(C) filed 5–17–2007; operative 5–17–2007 pursuant to Government Code section 11343.4 (Register 2007, No. 20).
9. Amendment filed 10–3–2007 pursuant to Government Code section 11343.4 (Register 2007, No. 40).

§ 1859.167.1. Final Charter School Apportionment Conversion Site Acquisition Guidelines for Projects Apportioned on February 23, 2005. [Repealed]

NOTE: Authority cited: Sections 17070.35 and 17078.64, Education Code. Reference: Sections 17078.56 and 17078.58, Education Code.

HISTORY

1. New section filed 6–1–2004 as an emergency; operative 6–1–2004 (Register 2004, No. 23). A Certificate of Compliance must be transmitted to OAL by 9–29–2004 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 6–1–2004 order transmitted to OAL 9–29–2004 and filed 11–10–2004 (Register 2004, No. 46).
3. Amendment of section heading filed 5–17–2007; operative 5–17–2007 pursuant to Government Code section 11343.4 (Register 2007, No. 20).
4. Repealer filed 10–3–2007; operative 10–3–2007 pursuant to Government Code section 11343.4 (Register 2007, No. 40).

§ 1859.167.2. Preliminary Apportionment Rescissions.

(a) For projects apportioned on or before February 23, 2005 that are rescinded by the Board for purposes other than those outlined in Section 1859.166, the following will occur upon rescission:

(1) the SFP New Construction Eligibility will be increased for the pupils assigned to the Preliminary Charter School Application for the school district that physically contains the Charter School within its geographical boundaries.

(2) Those projects that have received an advanced release of funds as provided in Section 1859.164.2(a), shall be reduced to costs incurred and closed–out pursuant to Section 1859.106 with a corresponding SFP new construction baseline eligibility adjustment for the pupils assigned to the Preliminary Charter School Application.

(b) For projects apportioned on July 2, 2003 that are rescinded by the Board for purposes other than those outlined in Section 1859.166, the funds shall be returned to the program as follows:

(1) A fund shall be established within the 2002 Charter School Facilities Account to be known as the Conversion Increase Fund. An amount equal to $16,634,364 from Preliminary Charter School Apportionments rescinded on or before April 25, 2007 shall be transferred, on a one time basis, from the Unrestricted Charter School Fund to the Conversion Increase Fund established within that same account. The Conversion Increase Fund shall be used for the purposes outlined in Section 1859.167(b)(4).

(2) Funds available due to projects that rescind after April 25, 2007 shall be transferred to the Unrestricted Charter School Fund within the 2002 Charter School Facilities Account.

(c) For projects apportioned on February 23, 2005 that are rescinded by the Board for purposes other than those outlined in Section 1859.166, the funds shall be returned to the program as follows:

(1) A fund shall be established within the 2004 Charter School Facilities Account to be known as the Conversion Increase Fund. This fund shall be used for the purposes outlined in Section 1859.167(b)(4). This fund shall include all amounts from Preliminary Charter School Apportionments rescinded from the 2004 Charter School Facilities Account on or before April 25, 2007, plus the amounts initially reserved for the DTSC/Relocation Fund and the Hazardous Material/Waste Removal Fund established in Section 1859.163.3.

(2) Funds available due to project rescissions after April 25, 2007 including both the Preliminary Apportionment reservation and any amount available pursuant to subsection (c)(1) above that is not needed for a Final Charter School Apportionment, shall first be used to replenish the DTSC/Relocation Fund and the Hazardous Material/Waste Removal Fund until the cumulative deposits made back into the funds total the amount of funds initially reserved. Once these funds have been replenished, future rescinded amounts shall be returned to the Unrestricted Charter School Fund.

(d) The maximum amount available for each individual Final Charter School Apportionment from the 2002 and/or 2004 Conversion Increase Fund shall be equal to the ratio of the project's Preliminary Charter School Apportionment to the total value of preliminary charter school apportionments awarded on February 23, 2005, for those recipients eligible for these Conversion Increase Fund funds, multiplied by the sum of the amount of funds available for the Conversion Increase Fund in both the 2002 and 2004 Charter School Facilities Accounts.

(e) For projects apportioned after February 23, 2005 any rescinded amounts shall be transferred into the Unrestricted Charter School Fund in the appropriate Charter School Facilities Account. Projects shall be rescinded pursuant to the process described in subsection (a) above with the exception that any adjustments to the baseline eligibility shall be based on the ratio of the number of unhoused pupils pursuant to Section 1859.162.2 and the project capacity which generated the project funding to the eligible expenditures.

Any funds released are subject to the fifty percent local matching share requirement as required by Education Code Section 17078.54(d).

NOTE: Authority cited: Sections 17070.35 and 17078.64, Education Code. Reference: Section 17078.54, Education Code.

HISTORY

1. New section filed 10–3–2007; operative 10–3–2007 pursuant to Government Code section 11343.4 (Register 2007, No. 40).

§ 1859.167.3. Use of the Unrestricted Charter School Funds.

(a) Any funds that return to the Unrestricted Charter School Fund in the 2002 Charter School Facilities Account shall be available on a first come, first served basis for the purposes outlined in Section 1859.167(a)(2).

(b) With the exception of funds that return to the program due to the collection of lease payments for local matching share amounts which may not be used for the purposes outlined in Section 1859.167(b)(4), any funds in the Unrestricted Charter School Fund in the 2004 Charter School Facilities Account shall first be used to fund projects on the Unfunded List pursuant to Section 1859.163.3 and then for the purposes outlined in Section 1859.167(b)(4)(C) on a first come, first served basis.

(c) Once all Preliminary Charter School Apportionments made on July 2, 2003 have either converted to a Final Charter School Apportionment or have been rescinded by the Board, the funds remaining in the Unrestricted Charter School Fund in the 2002 Charter School Facilities Account, with the exception of funds that return to the program due to the collection of lease payments for local matching share amounts, may be used for the purposes outlined in Sections 1859.163.3 and 1859.167(b)(4).

(d) Once all Preliminary Charter School Apportionments made on February 23, 2005 have either converted to a Final Charter School Apportionment or have been rescinded by the Board, the funds remaining in the Unrestricted Charter School Fund in the 2004 Charter School Facilities Account, in addition to any lease payments collected, may be used by the Board for other Charter School facility projects pursuant to Education Code Section 17078.58.

NOTE: Authority cited: Sections 17070.35 and 17078.64, Education Code. Reference: Section 17078.58, Education Code.

HISTORY

1. New section filed 10–3–2007; operative 10–3–2007 pursuant to Government Code section 11343.4 (Register 2007, No. 40).

[The next page is 234.38(g).]

§ 1859.168. Preliminary Charter School Apportionment Matching Share Requirement.

The Charter School will be subject to the matching share requirements in Section 1859.77.1 and Education Code Section 17078.54(d) that may be paid through lease payments authorized by the Authority in lieu of the matching share. All lease payments shall be paid to the Board to be redeposited to the Unrestricted Charter School Fund in the appropriate Charter School Facility Account. Any funds deposited in either Account shall be first used to fund remaining site acquisition costs off the Unfunded List pursuant to Section 1859.163.3. Should no projects remain on the Unfunded List the Board may use the funds for purposes of this Article.

NOTE: Authority cited: Sections 17070.35 and 17078.64, Education Code. Reference: Sections 17078.54 and 17078.58, Education Code.

HISTORY

1. New section filed 2–13–2003 as an emergency pursuant to Education Code section 17078.64(b); operative 2–13–2003 (Register 2003, No. 7). A Certificate of Compliance must be transmitted to OAL by 6–13–2003 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 6–13–2003 as an emergency; operative 6–13–2003 (Register 2003, No. 24). A Certificate of Compliance must be transmitted to OAL by 10–13–2003 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 10–9–2003 as an emergency; operative 10–9–2003 (Register 2003, No. 41). A Certificate of Compliance must be transmitted to OAL by 2–6–2004 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 10–9–2003 order transmitted to OAL 2–6–2004 and filed 3–23–2004 (Register 2004, No. 13).
5. Amendment of section and NOTE filed 6–1–2004 as an emergency; operative 6–1–2004 (Register 2004, No. 23). A Certificate of Compliance must be transmitted to OAL by 9–29–2004 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 6–1–2004 order transmitted to OAL 9–29–2004 and filed 11–10–2004 (Register 2004, No. 46).

§ 1859.169. Eligible Expenditures.

Expenditures made with the Final Charter School Apportionment must comply with Education Code Section 17072.35 and 17078.54(a). Expenditures for construction are eligible only if the construction contract was entered into on or after September 27, 2002.

NOTE: Authority cited: Sections 17070.35 and 17078.64, Education Code. Reference: Sections 17078.52, Education Code.

HISTORY

1. New section filed 2–13–2003 as an emergency pursuant to Education Code section 17078.64(b); operative 2–13–2003 (Register 2003, No. 7). A Certificate of Compliance must be transmitted to OAL by 6–13–2003 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 6–13–2003 as an emergency; operative 6–13–2003 (Register 2003, No. 24). A Certificate of Compliance must be transmitted to OAL by 10–13–2003 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 10–9–2003 as an emergency; operative 10–9–2003 (Register 2003, No. 41). A Certificate of Compliance must be transmitted to OAL by 2–6–2004 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 10–9–2003 order transmitted to OAL 2–6–2004 and filed 3–23–2004 (Register 2004, No. 13).

§ 1859.169.1. Charter School Project Savings.

Projects funded under the CSFP do not generate savings pursuant to Section 1859.103. In addition, State funds remaining at the completion of the project may not be used to satisfy the local matching share obligation. Remaining funds must be returned to the State.

NOTE: Authority cited: Sections 17070.35 and 17078.64, Education Code. Reference: Section 17078.54, Education Code.

HISTORY

1. New section filed 5–17–2007; operative 5–17–2007 pursuant to Government Code section 11343.4 (Register 2007, No. 20).

§ 1859.170. Additional Program Reporting Requirements.

A Charter School filing a Form SAB 50–09 on its own behalf pursuant to this Article shall comply with the reporting requirements of Sections 1859.100, 1859.101, 1859.102, and 1859.106.

NOTE: Authority cited: Sections 17070.35 and 17078.64, Education Code. Reference: Section 17078.54, Education Code.

HISTORY

1. New section filed 2–13–2003 as an emergency pursuant to Education Code section 17078.64(b); operative 2–13–2003 (Register 2003, No. 7). A Certificate of Compliance must be transmitted to OAL by 6–13–2003 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 6–13–2003 as an emergency; operative 6–13–2003 (Register 2003, No. 24). A Certificate of Compliance must be transmitted to OAL by 10–13–2003 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 10–9–2003 as an emergency; operative 10–9–2003 (Register 2003, No. 41). A Certificate of Compliance must be transmitted to OAL by 2–6–2004 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 10–9–2003 order transmitted to OAL 2–6–2004 and filed 3–23–2004 (Register 2004, No. 13).

§ 1859.171. Use of Facility.

A Charter School that has received funding pursuant to Section 1859.164.2(b) and has not met the timelines established in Section 1859.166 or is no longer occupying the facility constructed with funds derived through a Final Charter School Apportionment, the school district where the Charter School is physically located can either:

(a) Elect to take possession of the facility and pay the balance of the local matching share. The District may qualify for a waiver of repayment if it can meet all the following:

(1) Demonstrate that at the time the Form SAB 50–04 was submitted for Final Charter School Apportionment, the district would have qualified for financial hardship, pursuant to Section 1859.81; and,

(2) Certify to the Board that it will comply with the requirements of Education Code Section 17078.62(b)(4)(B).

(b) If the school district chooses not to take possession of the facility, it shall dispose of the facilities in the manner applicable to the disposal of surplus school sites pursuant to Education Code Sections 17455 through 17484. The proceeds from the sale shall be used to pay off the remaining loan balance, if any.

NOTE: Authority cited: Sections 17070.35 and 17078.64, Education Code. Reference: Section 17078.62, Education Code.

HISTORY

1. New section filed 2–13–2003 as an emergency pursuant to Education Code section 17078.64(b); operative 2–13–2003 (Register 2003, No. 7). A Certificate of Compliance must be transmitted to OAL by 6–13–2003 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 6–13–2003 as an emergency; operative 6–13–2003 (Register 2003, No. 24). A Certificate of Compliance must be transmitted to OAL by 10–13–2003 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 10–9–2003 as an emergency; operative 10–9–2003 (Register 2003, No. 41). A Certificate of Compliance must be transmitted to OAL by 2–6–2004 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 10–9–2003 order transmitted to OAL 2–6–2004 and filed 3–23–2004 (Register 2004, No. 13).
5. Amendment of first paragraph filed 6–1–2004 as an emergency; operative 6–1–2004 (Register 2004, No. 23). A Certificate of Compliance must be transmitted to OAL by 9–29–2004 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 6–1–2004 order transmitted to OAL 9–29–2004 and filed 11–10–2004 (Register 2004, No. 46).

Article 15. Overcrowding Relief Grant

§ 1859.180. General.

A School District seeking an Apportionment pursuant to the provisions of Education Code Section 17079 through 17079.30 for new construction shall complete and file a Form SAB 50–04.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17079.20, Education Code.

HISTORY

1. New article 15 (sections 1859.180–1859.184) and section filed 8–31–2007; operative 8–31–2007 pursuant to Government Code section 11343.4 (Register 2007, No. 35).

§ 1859.181. Eligible Schools.

An eligible school is a school for which the school site pupil population density is equal to or greater than 175 percent of the school site pupil population density recommended by the Superintendent, based on the

CBEDS Report for the 2005/2006 enrollment year, adjusted by the CDE by the following factors:

(a) Reduced to take into account the additional pupil capacity created by multistory construction.

(b) Reduced to take into account approved new construction projects, including projects approved pursuant to the

Critically Overcrowded School Facilities Program, Education Code Sections 17078.10 through 17078.30, unless the School District can demonstrate that those projects are not impacting density at the eligible school site.

In order to determine the school site pupil population density, the School District shall complete and submit to the CDE the Overcrowding Relief Grant Eligibility Determination form.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17079, Education Code.

HISTORY

1. New section filed 8–31–2007; operative 8–31–2007 pursuant to Government Code section 11343.4 (Register 2007, No. 35).

§ 1859.182. Determining Overcrowding Relief Pupil Eligibility.

(a) For purposes of the Overcrowding Relief Grant, an eligible pupil is a pupil that is housed in a portable classroom at the eligible school site, less the prorated number of portables that were funded by the Class Size Reduction Program pursuant to Chapter 6.10 of the Education Code. The Class Size Reduction prorate shall be calculated as follows:

(1) Determine the total number of portables funded pursuant to Chapter 6.10 of the Education Code.

(2) Divide the amount determined in (a)(1) by the total number of schools currently in the School District that serve grades K–3. The resulting number of classrooms must be reduced from each eligible school site that serves grades K–3. The total number of portable classrooms that are reduced from all eligible school sites shall not exceed the amount determined in (a)(1).

(b) The determination of the district–wide pupil eligibility shall be determined by the submittal of the Form SAB 50–11.

(c) The determination of the site specific pupil eligibility shall be determined by the CDE on the Overcrowding Relief Grant Eligibility Determination form and will be conducted on a one–time basis for each eligible school.

(d) The site specific and district–wide pupil eligibility may be adjusted as follows:

(1) Reduced by the number of eligible pupils that receive an Overcrowding Relief Grant.

(2) Adjusted as a result of errors or omissions by the School District or by the OPSC.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17079.10, Education Code.

HISTORY

1. New section filed 8–31–2007; operative 8–31–2007 pursuant to Government Code section 11343.4 (Register 2007, No. 35).

§ 1859.183. Funding.

The Board shall provide a New Construction Adjusted Grant to each eligible pupil requested in the project. The pupil grants may be requested by the School District at any grade level, regardless of the grade level of the eligible school.

The maximum number of Overcrowding Relief Grants for each eligible school site shall be subject to the following limitations:

(a) The number of Overcrowding Relief Grants may not exceed the number of pupils whose removal from the pupil density calculation would reduce the density of the eligible school site to 150 percent of the school site pupil population density recommended by the Superintendent, based on the CBEDS reported for the 2005/2006 enrollment year.

(b) The number of Overcrowding Relief Grants may not exceed the capacity of those portables on the eligible school site that are being replaced in the project.

In no event shall a School District receive in total more Overcrowding Relief Grants than the number of pupils housed in portable classrooms that were included in the School District's initial new construction eligibility determination pursuant to Education Code 17071.75 as identified in part on Line 1 of Part III of the Form SAB 50–02 and as calculated on the Form SAB 50–11.

The Overcrowding Relief Grant must be used to replace an equivalent number of portable classrooms with permanent classrooms. Those portables that are replaced with Overcrowding Relief Grants must be removed from the eligible school site and from K – 12 grade classroom use, pursuant to Education Code Section 17079.30, within six months of the date of Occupancy of the replaced permanent classrooms. Overcrowding Relief Grants may be used for those purposes pursuant to Education Code 17072.35 with the exception of the construction, acquisition or transportation of portable classrooms. Those School Districts receiving an Overcrowding Relief Grant must comply with all new construction provisions of the SFP, including but not limited to Sections 1859.100, 1859.102, 1859.104, 1859.105, and 1859.106.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Sections 17079.10, 17079.20 and 17079.30, Education Code.

HISTORY

1. New section filed 8–31–2007; operative 8–31–2007 pursuant to Government Code section 11343.4 (Register 2007, No. 35).

§ 1859.184. Overcrowding Relief Grant Application Submittals and Apportionments.

(a) The Board shall accept approved applications for Overcrowding Relief Grants as follows:

(1) For the funding made available for this purpose for the first funding cycle, the School District shall submit an

approved application by January 31, 2008.

(2) The Board shall accept approved applications on a semi–annual basis thereafter.

The Board shall apportion Overcrowding Relief Grants based upon the highest density of the eligible schools that have submitted an approved application. Any School District that does not receive an Overcrowding Relief Grant due to low school density and insufficient funds may request that its application remain with the OPSC for consideration in the following semi–annual funding cycle.

(b) The Board shall apportion the Overcrowding Relief Grants as follows:

(1) For the first funding cycle, up to a maximum of $500 million for all approved applications that are received by January 31, 2008.

(2) For the second funding cycle, up to a maximum of $300 million for all approved applications that are received by July 31, 2008, plus any remaining funds not apportioned during the previous funding cycle.

(3) Approved applications that are received by January 30, 2009 shall be apportioned any remaining funds not allocated at the previous funding cycles, plus an additional $200 million.

The approved applications for Overcrowding Relief Grants must provide a narrative indicating how the project will relieve overcrowding at the eligible school.

A School District may submit an approved application to request an Overcrowding Relief Grant from the funding provided under Proposition 1D for a project that has been occupied, if the construction contract for the project was signed after Board approval of these regulations. The School District must have obtained all project approvals required for a new construction funding application prior to the construction contract date.

NOTE: Authority cited: Section 17070.35, Education Code. Reference: Section 17079.20, Education Code.

HISTORY

1. New section filed 8–31–2007; operative 8–31–2007 pursuant to Government Code section 11343.4 (Register 2007, No. 35).

Article 16. Career Technical Education Facilities Program

§ 1859.190. General.

An applicant seeking Career Technical Education Facilities Project funding pursuant to the provisions of Education Code Section 17078.72, shall complete and file Form SAB 50–10.

An applicant may submit multiple Career Technical Education Facilities applications for different career technical education projects located at a single school site, pursuant to Education Code Section 17078.72(e), (f), and (i).

Modernization of facilities under Article 16 shall not affect the Modernization Eligibility of the facility pursuant to Section 1859.60.

NOTE: Authority cited: Sections 17070.35 and 17078.72(k), Education Code. Reference: Section 17078.72, Education Code.

HISTORY

1. New article 16 (sections 1859.190–1859.199) and section filed 7–13–2007 as an emergency; operative 7–13–2007 (Register 2007, No. 28). Pursuant to Education Code section 17078.72(k) a Certificate of Compliance must be transmitted to OAL by 7–14–2008 or emergency language will be repealed by operation of law on the following day.
2. Editorial correction of HISTORY 1 (Register 2007, No. 52).
3. Certificate of Compliance as to 7–13–2007 order transmitted to OAL 3–18–2008 and filed 4–29–2008 (Register 2008, No. 18).

§ 1859.191. Career Technical Education Facilities Project Application Submittal.

(a) The Board shall accept Approved Applications for Career Technical Education Facilities Project Funding and make apportionments as follows:

(1) All applications received in a six month cycle will be processed and prioritized for career technical education funding in the manner described in Section 1859.194.

(2) The funding cycles are established as follows:

(A) Approved Applications for Career Technical Education Facilities Project Funding for the first funding cycle must be submitted to the OPSC by October 31, 2007.

(B) Approved Applications for Career Technical Education Facilities Project Funding for the second funding cycle must be submitted to the OPSC by April 30, 2008.

(C) At the discretion of the Board, subsequent funding cycles may continue every six months thereafter until the Career Technical Education Facilities Program funds are exhausted or other funds become available.

(3) The Career Technical Education Facilities funds will be apportioned at the next available Board meeting after the end of each application cycle.

NOTE: Authority cited: Sections 17070.35 and 17078.72(k), Education Code. Reference: Section 17078.72, Education Code.

HISTORY

1. New section filed 7–13–2007 as an emergency; operative 7–13–2007 (Register 2007, No. 28). Pursuant to Education Code section 17078.72(k) a Certificate of Compliance must be transmitted to OAL by 7–14–2008 or emergency language will be repealed by operation of law on the following day.
2. Editorial correction of HISTORY 1 (Register 2007, No. 52).
3. Certificate of Compliance as to 7–13–2007 order transmitted to OAL 3–18–2008 and filed 4–29–2008 (Register 2008, No. 18).

§ 1859.192. Career Technical Education Facilities Program Eligibility.

An applicant requesting funding for a Career Technical Education Facilities Project may submit Form SAB 50–10 to the OPSC if all the following criteria are met:

(a) For a new construction project, the applicant:

(1) Is a local educational agency operating a comprehensive high school pursuant to Education Code Sections 51224, 51225.3 and 51228.

(2) Has an active career technical advisory committee pursuant to Education Code Section 8070.

(b) For a modernization project, the applicant:

(1) Is a local educational agency operating a comprehensive high school pursuant to Education Code Sections 51224, 51225.3 and 51228; or,

(2) Is a joint powers authority operating career technical education programs as of May 20, 2006.

(3) Has an active career technical advisory committee pursuant to Education Code Section 8070.

(c) The applicant's Career Technical Education Facilities Program application has met all the requirements in Education Code Section 17078.72(i) and scored at least 105 points.

An applicant need not demonstrate New Construction Eligibility or Modernization Eligibility in order to participate in the Career Technical Education Facilities Program.

NOTE: Authority cited: Sections 17070.35 and 17078.72(k), Education Code. Reference: Sections 8070, 17078.72, 51224, 51225.3 and 51228, Education Code.

HISTORY

1. New section filed 7–13–2007 as an emergency; operative 7–13–2007 (Register 2007, No. 28). Pursuant to Education Code section 17078.72(k) a Certificate of Compliance must be transmitted to OAL by 7–14–2008 or emergency language will be repealed by operation of law on the following day.
2. Editorial correction of HISTORY 1 (Register 2007, No. 52).
3. Certificate of Compliance as to 7–13–2007 order transmitted to OAL 3–18–2008 and filed 4–29–2008 (Register 2008, No. 18).

§ 1859.193. Career Technical Education Facilities Grant Determination.

A Career Technical Education Facilities Project may construct a new facility or modernize or Reconfigure an existing school building. The application for Career Technical Education Facility funding may accompany an application for new construction funding pursuant to Section 1859.70 or may be submitted independently.

The applicant must identify square footage of the Career Technical Education Facility being constructed, modernized, reconfigured or equipped, on the funding application. Equipment purchased under the Career Technical Education Facilities Program must have an average useful life expectancy of at least ten years pursuant to Education Code 17078.72(a). An application for a Career Technical Education Facilities Project may consist entirely of equipment. All equipment must be purchased on or after May 20, 2006, unless the Career Technical Education Facilities Project is combined with a qualifying SFP new construction project pursuant to Section 1859.193.1.

(a) For new construction of a Career Technical Education Facilities Project included in a qualifying New Construction Grant, the Career Technical Education Facilities grant amount shall be the lesser of either (1) or (2):

(1) The sum of the costs uniquely related to facilities required to provide Career Technical Education as determined below:

(A) 50 percent of the cost of construction of the Career Technical Education Facilities Project, as determined by the project architect, subject to OPSC review and approval.

(B) 50 percent of the cost to equip the Career Technical Education Facilities Project with necessary equipment.

(C) Minus an allowance for New Construction Grants provided for Career Technical Education classrooms, determined by:

1. Multiplying 960 square feet by the number of classrooms in the Career Technical Education Facilities Project that were included in the New Construction project.

2. Multiplying the amount determined in (a)(1)(C)1 by 50 percent of the Current Replacement Cost for non–Toilet Facilities.

(2) $3 million per Career Technical Education Facilities Project.

(3) Site development work is not allowed as part of a Career Technical Education Facilities Project included in a New Construction Grant. Site

development work necessary pursuant to Section 1859.76, may be requested by the district under the qualifying SFP New Construction.

(b) For stand–alone new construction of a Career Technical Education Facilities Project, the grant amount shall be the lesser of either (1) or (2):

(1) The sum of the costs uniquely related to facilities required to provide Career Technical Education as determined below:

(A) 50 percent of the cost of construction of the Career Technical Education Facilities Project, as determined by the project architect, subject to OPSC review and approval.

(B) 50 percent of the cost to equip the Career Technical Education Facilities Project with necessary equipment.

(C) 50 percent of site development work that meets the following criteria:

1. It is necessary and applicable to the Career Technical Education Facilities Project.

2. It meets the requirements for site development costs as outlined in Section 1859.76.

(2) $3 million per Career Technical Education Facilities Project.

(3) If the district is requesting funding for site development work applicable to the Career Technical Education Facilities Project, the district must submit a detailed cost estimate and appropriate DSA approved plans with the Form SAB 50–10. The cost estimate must include appropriate justification documents that indicate the work is necessary to complete the Career Technical Education Facilities Project and conform to the requirements in Section 1859.76.

(4) Utility service(s) cost shall be prorated, if necessary, for any excess capacity not needed to service the Career Technical Education Facilities Project.

(c) For Modernization of a Career Technical Education Facilities Project, the grant amount shall be the lesser of either (1) or (2):

(1) The sum of the costs uniquely related to facilities required to provide Career Technical Education Facilities Project as determined below:

(A) 50 percent of the cost to modernize or Reconfigure the Career Technical Education Facilities, as determined by the project architect, subject to OPSC review and approval.

(B) 50 percent of the cost to equip the Career Technical Education Facilities with necessary equipment.

(2) $1.5 million per Career Technical Education Facilities Project.

(3) Reconfiguring an existing school building must not displace a minimum essential facility. In any case involving the replacement of a minimum essential facility due to the reconfiguration of an existing building, the replacement must be part of the plans submitted in support of the Career Technical Education Facilities Application, must occur concurrently, and cannot be part of a SFP Application for new construction.

(4) Utility service(s) cost shall be prorated, if necessary, for any excess capacity not needed to service the Career Technical Education Facilities Project.

(d) If an applicant meets the eligibility criteria in Section 1859.192, but does not have the necessary approvals from the DSA and/or the CDE at the time of apportionment, the Board may apportion funds for the Career Technical Education Facilities Project and reserve them for a period of up to 12 months. The grant amount to be reserved for the project will be the maximum funding as determined above in (a), (b), or (c).

NOTE: Authority cited: Sections 17070.35 and 17078.72(k), Education Code. Reference: Section 17078.72, Education Code.

HISTORY

1. New section filed 7–13–2007 as an emergency; operative 7–13–2007 (Register 2007, No. 28). Pursuant to Education Code section 17078.72(k) a Certificate of Compliance must be transmitted to OAL by 7–14–2008 or emergency language will be repealed by operation of law on the following day.
2. Editorial correction of HISTORY 1 (Register 2007, No. 52).
3. Certificate of Compliance as to 7–13–2007 order, including amendment of second paragraph and subsection (b), transmitted to OAL 3–18–2008 and filed 4–29–2008 (Register 2008, No. 18).

§ 1859.193.1. Qualifying SFP Project.

For purposes of meeting the requirements in Sections 1859.193(a) or (c), the district may combine a Career Technical Education Facilities Project with any of the following applications in (a) or (b):

(a) A new construction or modernization funding application that is submitted at the same time as the Career Technical Education Facilities Project application.

(b) An Approved Application for new construction or modernization funding that has been approved, but has not received a full apportionment (i.e., currently on the workload list) or has been fully funded, if the following criteria are met:

(1) For new construction:

(A) The plans and specifications for the Career Technical Education Facilities Project were included in the original DSA approved plans and specifications for the Approved Application for new construction funding.

(B) The classrooms constructed for the Career Technical Education Facilities Project were not occupied prior to May 20, 2006.

(2) For modernization:

(A) The plans and specifications for the Career Technical Education Facilities Project were included in the original DSA approved plans and specifications for the Approved Application for modernization funding.

(B) The construction contracts for the Career Technical Education Facilities Project were executed on or after May 20, 2006.

(c) If the Career Technical Education Facilities Project application is submitted separately, there is no requirement that the Approved Application for new construction or modernization be withdrawn.

NOTE: Authority cited: Sections 17070.35 and 17078.72(k), Education Code. Reference: Section 17078.72, Education Code.

HISTORY

1. New section filed 7–13–2007 as an emergency; operative 7–13–2007 (Register 2007, No. 28). Pursuant to Education Code section 17078.72(k) a Certificate of Compliance must be transmitted to OAL by 7–14–2008 or emergency language will be repealed by operation of law on the following day.
2. Editorial correction of HISTORY 1 (Register 2007, No. 52).
3. Certificate of Compliance as to 7–13–2007 order, including amendment of subsection (b)(2)(B), transmitted to OAL 3–18–2008 and filed 4–29–2008 (Register 2008, No. 18).

§ 1859.194. Career Technical Education Facilities Program Matching Share Requirement.

Any funding provided by these regulations shall require an applicant matching share contribution on a dollar–for–dollar basis. The applicant matching share may come from any source including, but not limited to, private industry groups, school districts, county offices of education, and joint powers authorities.

If the applicant's available matching share does not equal the grant amount or the matching share is not immediately available, a loan may be made to the applicant. The amount of the loan shall be determined by compliance with (a) below. If the need for a loan is substantiated, it shall be paid over time through loan payments authorized by the Board.

(a) Require the applicant declare any local funds available for applicant contribution from any of the following sources:

(1) Developer Fees

(2) Certificates of Participation

(3) Local General Obligation Bonds, Mello–Roos Bonds and School Facility Improvement District Bonds

(4) Contribution from private industry groups or joint powers authority

(5) Any other Capital Facility funding

Upon apportionment, the OPSC will prepare a loan agreement on behalf of the Board for the applicant.

(b) The loan agreement shall stipulate the following:

(1) The loan term shall be set at ten years with a one–time extension of five years if the applicant is in jeopardy of becoming financially insolvent and becoming subject to the requirements of Assembly Bill (AB) 1200, Chapter 1213, Statutes of 1991 (Eastin).

(2) The loan agreement shall include interest on the unpaid principal balance at the same rate as that charged by the Pooled Money Investment Board. The interest rate will be set on the date that the project funding apportionment is approved by the Board.

(3) Interest starts accruing on the fund release date.

(4) The first payment is due no later than two years from the fund release date.

(5) Should the district default on the loan payments, the OPSC will initiate collection procedures from the School Fund Apportionment pursuant to Education Code Section 17076.10(c).

NOTE: Authority cited: Sections 17070.35 and 17078.72(k), Education Code. Reference: Sections 17076.10 and 17078.72, Education Code.

HISTORY

1. New section filed 7–13–2007 as an emergency; operative 7–13–2007 (Register 2007, No. 28). Pursuant to Education Code section 17078.72(k) a Certificate of Compliance must be transmitted to OAL by 7–14–2008 or emergency language will be repealed by operation of law on the following day.
2. Editorial correction of HISTORY 1 (Register 2007, No. 52).
3. Certificate of Compliance as to 7–13–2007 order transmitted to OAL 3–18–2008 and filed 4–29–2008 (Register 2008, No. 18).

§ 1859.195. Career Technical Education Facilities Project Apportionment.

The Board shall apportion Career Technical Education Facilities Funds in the following manner:

(a) The Board may apportion up to a maximum of $350 million for applications received in the first Career Technical Education Facilities funding cycle ending October 31, 2007.

(1) The amount of $250 million shall be distributed proportionally to the Service Regions based on the high school enrollment within each Service Region. The proportional distribution of funds shall be determined by the current year CBEDS enrollment.

(2) If funding requested on qualifying applications exceeds the funds allotted to any Service Region, the amount of $100 million shall be available for apportionment to the highest ranked projects regardless of Service Region.

(b) The Board may apportion up to the sum of $150 million plus any funds not apportioned in the first cycle for applications received in the second Career Technical Education Facilities funding cycle ending April 30, 2008.

(1) The amount of $150 million plus any funds remaining from (a)(2) shall be distributed proportionally to each of the Service Regions based on the high school enrollment within each Service Region.

(2) Any unused funds distributed under (a)(1) shall be added to the amount determined for each Service Region in (b)(1).

(3) The cumulative apportionments in each Service Region may not exceed the amount determined in (1) and (2) except as described in Section 1859.196(b).

(c) The Board may apportion any or all remaining available Career Technical Education Facilities funds in subsequent cycles, as deemed necessary and practical by the Board.

NOTE: Authority cited: Sections 17070.35 and 17078.72(k), Education Code. Reference: Section 17078.72, Education Code.

HISTORY

1. New section filed 7–13–2007 as an emergency; operative 7–13–2007 (Register 2007, No. 28). Pursuant to Education Code section 17078.72(k) a Certificate of Compliance must be transmitted to OAL by 7–14–2008 or emergency language will be repealed by operation of law on the following day.
2. Editorial correction of HISTORY 1 (Register 2007, No. 52).
3. Certificate of Compliance as to 7–13–2007 order transmitted to OAL 3–18–2008 and filed 4–29–2008 (Register 2008, No. 18).

§ 1859.196. Career Technical Education Facilities Program Funding Order.

(a) In the first funding cycle, the Board shall fund eligible Career Technical Education Facilities Projects as follows:

(1) Approved Applications for Career Technical Education Facilities Project Funding shall be sorted by Service Region.

(2) Within each Service Region, approved applications will be ranked from highest to lowest according to the numerical score for the applicant's Career Technical Education Facilities Program application pursuant to Education Code Section 17078.72(i).

(3) The locale of each project shall be identified as Urban, Suburban or Rural.

(4) The Board shall apportion funds within each Service Region to the highest ranked project in each locale. In order to continue this funding process, one project from each locale must be apportioned. If there are no applications in a given locale(s), projects will be apportioned in the remaining locale(s).

(5) The process will continue until the applications or funds are exhausted within each Service Region as prorated pursuant to Section 1859.195. If an application cannot be fully apportioned because insufficient funding remains within the Service Region, the application shall be considered for funding pursuant to Section 1859.195(a)(2). If there is insufficient funding under Section 1859.195(a)(2), the applicant may either accept the available funding within the Service Region as the full and final apportionment for the project or refuse funding entirely. If funding is refused, the Board shall consider funding the next project eligible for an apportionment pursuant to this Section.

(6) In the event two or more applications within a Service Region have the same career technical education plan score and are in the same locale, the applicant with the highest total points in all weighted areas identified in Education Code Section 17078.72(j) will be funded first.

(b) In the second funding cycle, the Board shall fund eligible Career Technical Education Facilities Projects as described in (a) until the applications or funds are exhausted within each Service Region or until the conditions in (1) and (2) are met:

(1) Funds remain after all applications in a given Service Region have been apportioned.

(2) Approved Applications remain in other Service Regions because the requests exceed the funds allotted to the Service Region(s) in Section 1859.195(b). If an application cannot be fully apportioned because insufficient funding remains within the Service Region, the application shall be considered for funding pursuant to (c). If there is insufficient funding under (c), the applicant may either accept the available funding within the Service Region as the full and final apportionment for the project or refuse funding entirely. If funding is refused, the Board shall consider funding the next project eligible for an apportionment pursuant to this Section.

(c) If (b)(1) and (b)(2) are met in the second funding cycle, the remaining available career technical education facilities funds shall be pooled and apportioned to the highest ranked project in each locale regardless of Service Region. One of each locale must be accounted for before a locale is repeated.

(d) For the third and any subsequent cycles, the Board shall apportion funds regardless of Service Region.

(1) Funds shall be apportioned to the highest ranked project in each locale. In order to continue this funding process, one project from each locale must be apportioned. If there are no applications in a given locale(s), projects will be apportioned in the remaining locale(s).

(2) The process will continue until the applications or funds are exhausted, whichever comes first.

(3) In the event two or more applications have the same career technical education plan score and are in the same locale, the applicant with the highest total points in all weighted areas identified in Education Code Section 17078.72(j) will be funded first.

If a Career Technical Education Facilities Project within any funding cycle cannot be fully apportioned because insufficient funding is available, the applicant may either accept the available funding as the full and final apportionment for the project or refuse funding entirely. If funding is refused, the Board shall consider funding the next project eligible for an apportionment pursuant to this Section.

For any Career Technical Education Facilities Project not apportioned pursuant to this Section, the application shall be returned to the applicant. A Career Technical Education Facilities Project returned to the applicant may be resubmitted during a subsequent application acceptance period

identified in Section 1859.191, provided the application meets the eligibility criteria in Section 1859.192.

NOTE: Authority cited: Sections 17070.35 and 17078.72(k), Education Code. Reference: Section 17078.72, Education Code.

HISTORY

1. New section filed 7–13–2007 as an emergency; operative 7–13–2007 (Register 2007, No. 28). Pursuant to Education Code section 17078.72(k) a Certificate of Compliance must be transmitted to OAL by 7–14–2008 or emergency language will be repealed by operation of law on the following day.
2. Editorial correction of HISTORY 1 (Register 2007, No. 52).
3. Certificate of Compliance as to 7–13–2007 order, including amendment of section, transmitted to OAL 3–18–2008 and filed 4–29–2008 (Register 2008, No. 18).

§ 1859.197. Fund Release Process.

The OPSC will release State funds that have been apportioned by the Board pursuant to Sections 1859.195 and 1859.196 after submittal by the applicant of the Form SAB 50–05.

(a) If an apportionment was made for a Career Technical Education Facilities Project, the applicant must submit a Form SAB 50–05 within 18 months of the Apportionment as outlined in Education Code Section 17076.10 or the apportionment shall be rescinded without further Board action.

(b) If Career Technical Education Facilities funds were reserved for the applicant pursuant to Section 1859.193(d) of these Regulations, the applicant:

(1) Has one year from the date of apportionment to submit the CDE plan approval and DSA–approved plans and specifications, as required, to the OPSC for the Career Technical Education Facilities Project, otherwise the apportionment shall be rescinded without further Board action.

(2) Has 18 months from the date the CDE plan approval and DSA–approved plans and specifications, as needed, are submitted to the OPSC to submit a completed Form SAB 50–05 or the apportionment shall be rescinded without further Board action.

(c) If the applicant requires a loan for the entire matching share requirement pursuant to Section 1859.194(b) of these Regulations:

(1) The OPSC will release ten percent of the Career Technical Education Facilities grant to the applicant within 30 calendar days of the apportionment.

(2) The applicant has one year from the date of apportionment to submit the CDE plan approval and DSA–approved plans and specifications, as required, to the OPSC for the Career Technical Education Facilities Project, otherwise the apportionment shall be rescinded without further Board action

(3) The applicant has 18 months from the date in (c)(2) to submit a completed Form SAB 50–05 or the apportionment shall be rescinded without further Board action.

(d) The applicant is subject to substantial progress time limit on the apportionment as outlined in Education Code Section 17076.10(b).

NOTE: Authority cited: Sections 17070.35 and 17078.72(k), Education Code. Reference: Sections 17078.72 and 17076.10, Education Code.

HISTORY

1. New section filed 7–13–2007 as an emergency; operative 7–13–2007 (Register 2007, No. 28). Pursuant to Education Code section 17078.72(k) a Certificate of Compliance must be transmitted to OAL by 7–14–2008 or emergency language will be repealed by operation of law on the following day.
2. Editorial correction of HISTORY 1 (Register 2007, No. 52).
3. Certificate of Compliance as to 7–13–2007 order, including amendment of first paragraph, transmitted to OAL 3–18–2008 and filed 4–29–2008 (Register 2008, No. 18).

§ 1859.198. Time Limit on Apportionment and Substantial Progress.

The district is subject to the time limit on the apportionment as outlined in Education Code Section 17076.10 and substantial progress requirements pursuant to Section 1859.105.

Any Career Technical Education Facilities Project funds returned due to projects being rescinded or reduced to cost incurred shall be made available for apportionment in subsequent funding cycles.

NOTE: Authority cited: Sections 17070.35 and 17078.72(k), Education Code. Reference: Section 17078.72, Education Code.

HISTORY

1. New section filed 7–13–2007 as an emergency; operative 7–13–2007 (Register 2007, No. 28). Pursuant to Education Code section 17078.72(k) a Certificate of Compliance must be transmitted to OAL by 7–14–2008 or emergency language will be repealed by operation of law on the following day.
2. Editorial correction of HISTORY 1 (Register 2007, No. 52).
3. Certificate of Compliance as to 7–13–2007 order transmitted to OAL 3–18–2008 and filed 4–29–2008 (Register 2008, No. 18).

§ 1859.199. Program Accountability.

A project shall be deemed complete when either of the following occurs, whichever occurs first:

(a) The final notice of completion is filed for the project; or,

(b) Four years have elapsed from the final fund release for the project.

Projects will be subject to a Program Accountability Expenditure Audit pursuant to Section 1859.106. Any repayments due back to the state as a result of these audits will be subject to the repayment provisions identified in Section 1859.106.1.

An applicant district may not retain savings realized by a Career Technical Education Facilities Project.

NOTE: Authority cited: Sections 17070.35 and 17078.72(k), Education Code. Reference: Section 17078.72, Education Code.

HISTORY

1. New section filed 7–13–2007 as an emergency; operative 7–13–2007 (Register 2007, No. 28). Pursuant to Education Code section 17078.72(k) a Certificate of Compliance must be transmitted to OAL by 7–14–2008 or emergency language will be repealed by operation of law on the following day.
2. Editorial correction of HISTORY 1 (Register 2007, No. 52).
3. Certificate of Compliance as to 7–13–2007 order transmitted to OAL 3–18–2008 and filed 4–29–2008 (Register 2008, No. 18).

Subgroup 5.6. Regulations Relating to the Federal School Renovation Program (Federal School Repair and Renovation Program)

Article 1. General Provisions and Definitions

§ 1859.200. Purpose.

These regulations implement the Federal School Repair and Renovation Program, which establish a grant program to administer federal funds to Local Education Agencies authorized by Section 1(a)(1), United States Department of Education Consolidated Appropriations Act of 2001 (Public Law 106–554).

NOTE: Authority cited: Sections 15502 and 15503, Government Code; and Section 12300, Education Code. Reference: Section 321, Public Law 106–554.

HISTORY

1. New subgroup 5.6 (articles 1–5, sections 1859.200–1859.220), article 1 (sections 1859.200–1859.202) and section filed 3–15–2002 as an emergency; operative 3–15–2002 (Register 2002, No. 11). A Certificate of Compliance must be transmitted to OAL by 7–15–2002 or emergency language will be repealed by operation of law on the following day.
2. New subgroup 5.6 (articles 1–5, sections 1859.200–1859.220), article 1 (sections 1859.200–1859.202) and section refiled 7–11–2002 as an emergency; operative 7–11–2002 (Register 2002, No. 28). A Certificate of Compliance must be transmitted to OAL by 11–8–2002 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 7–11–2002 order transmitted to OAL 11–6–2002 and filed 12–19–2002 (Register 2002, No. 51).

§ 1859.201. Director of General Services.

The Director of General Services, or the Director's legal designee shall perform all acts necessary to carry out the provisions of these regulations except such functions as are reserved to the Board and to other agencies by law or by Sections 1859.200 through 1859.220 inclusive. The acts to be performed include, but are not limited to, entering into contracts to administer the regulations.

NOTE: Authority cited: Sections 15502 and 15503, Government Code; and Section 12300, Education Code. Reference: Section 321, Public Law 106–554.

HISTORY

1. New section filed 3–15–2002 as an emergency; operative 3–15–2002 (Register 2002, No. 11). A Certificate of Compliance must be transmitted to OAL by 7–15–2002 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 7–11–2002 as an emergency; operative 7–11–2002 (Register 2002, No. 28). A Certificate of Compliance must be transmitted to OAL by 11–8–2002 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 7–11–2002 order transmitted to OAL 11–6–2002 and filed 12–19–2002 (Register 2002, No. 51).

§ 1859.202. Definitions.

For the purpose of these regulations, the terms set forth below shall have the following meanings, subject to the provisions of the law:

"ADA" means the federal Americans with Disabilities Act of 1990 codified in Section 12101 et seq. Title 42, United States Code.

"Administration Costs" means the costs associated with the preparation and submittal of the Federal Renovation Program application to the State and the costs necessary to assure all state application requirements have been met.

"Apportionment" means a reservation of funds by the Board for eligible Federal Renovation Program applications.

"Board" means the State Allocation Board as established by Section 15490 of the Government Code.

"CBEDS Report" means the enrollment information provided through the California Basic Education Data System by the Local Educational Agency to the California Department of Education.

"Charter School" means a school established in accordance with the provisions of Education Code Sections 47605 through 47608.

"Community School Pupil" means a pupil meeting one or more of the conditions described in Subdivision (b) of Education Code Section 48662 or any of the conditions described in Education Code Section 1981.

"Deferred Maintenance Program (DMP)" means the state deferred maintenance funding authorized by Education Code Sections 17582 through 17588.

"DMP Critical Hardship Unfunded List" means an information list of critical hardship projects authorized by Education Code Section 17587 approved by the Board.

"Federal Renovation Program (FRP)" means the Federal School Repair and Renovation Program authorized by Section 1(a)(1), United States Department of Education Consolidated Appropriations Act of 2001 (Public Law 106–554).

"High Poverty Local Educational Agency" means an LEA that has at least 30 percent of its pupils defined as Poor Children or has at least 10,000 of its pupils defined as Poor Children.

"Impacted LEA" means an LEA that meets the requirements of Section (a)(3) of the United States Department of Education Consolidated Appropriations Act of 2001 (Public Law 106–554).

"Local Educational Agency" means an entity that meets the requirements of Section 14101(18)(A) or (B) of the federal Elementary and Secondary Education Act of 1965.

"Mello–Roos Bonds" means the bonds that are authorized under the provisions of the Mello–Roos Community Facilities Act of 1982, commencing with Government Code Section 53311.

"Office of Public School Construction (OPSC)" means the State office within the Department of General Services that assists the Board as necessary and administers the FRP on behalf of the Director.

"OPSC Deferred Maintenance Program Critical Hardship Workload List" means a list of critical hardship applications authorized by Education Code Section 17587 submitted to the OPSC but not yet included on the DMP Critical Hardship Unfunded List.

"OPSC Modernization Workload List" means a list of SFP modernization projects for which the LEA has submitted all necessary application documents to the OPSC that are required to be submitted as identified in the General Information Section of Forms SAB 50–01, *Enrollment Certification/Projection*, (Revised 03/05); SAB 50–02, *Existing School Building Capacity*, (Revised 09/02); SAB 50–03, *Eligibility Determination*, (Revised 09/06); and SAB 50–04, *Application for Funding*, as specified in Section 1859.2 "Form SAB 50–04," under the SFP.

"Poor Children" means children five to seventeen years of age who are from families with an income below the poverty line as defined by the federal Section 673(2) of the Omnibus Budget Reconciliation Act of 1981 [42 U.S.C. 9902(2)].

"Private School" means an entity that has filed an affidavit or statement with the Superintendent of Public Instruction pursuant to Education Code Section 33190.

"Public Law 106–554" means Section 1(a)(1), United States Department of Education Consolidated Appropriations Act of 2001.

"Rehabilitation Act" means Section 504 of the Rehabilitation Act of 1973 codified in Section 794 of Title 29, United States Code.

"Rural Local Educational Agency" means a LEA in which the plurality of the pupils are in schools that are in Locale Codes of 7 and 8 as defined by the United States Department of Education's National Center for Education Statistics.

"School Facilities Improvement District" means a legal entity authorized by Education Code Section 15300 to generate school facilities funding.

"School Facility Program (SFP)" means the Leroy F. Greene School Facilities Act of 1998.

"SFP Modernization Unfunded List" means an information list of unfunded modernization projects approved under the provisions of the SFP.

"Section" means a section in these Subgroup 5.6 regulations.

"Special Day Class Pupil" means an individual with exceptional needs as described in Education Code Section 56026 as further defined and classified in 34 Code of Federal Regulations Part 300.5.

"State Educational Agency" means the California Department of Education.

NOTE: Authority cited: Sections 15502 and 15503, Government Code; and Section 12300, Education Code. Reference: Section 15504, Government Code; and Section 321, Public Law 106–554.

HISTORY

1. New section filed 3–15–2002 as an emergency; operative 3–15–2002 (Register 2002, No. 11). A Certificate of Compliance must be transmitted to OAL by 7–15–2002 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 7–11–2002 as an emergency; operative 7–11–2002 (Register 2002, No. 28). A Certificate of Compliance must be transmitted to OAL by 11–8–2002 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 7–11–2002 order, including amendment of definition of "OPSC Modernization Workload List," transmitted to OAL 11–6–2002 and filed 12–19–2002 (Register 2002, No. 51).
4. Amendment of definition of "OPSC Modernization Workload List" filed 10–27–2005; operative 10–27–2005 pursuant to Government Code section 11343.4 (Register 2005, No. 43).
5. Change without regulatory effect amending definition of "OPSC Modernization Workload List" filed 8–11–2006 pursuant to section 100, title 1, California Code of Regulations (Register 2006, No. 32).
6. Certificate of Compliance as to 9–5–2006 order, including further amendment of definition of "OPSC Modernization Workload List" transmitted to OAL 1–3–2007 and filed 2–16–2007 (Register 2007, No. 7).
7. Amendment of *Application for Funding* (incorporated by reference) and amendment of definition of "OPSC Modernization Workload List" filed 4–25–2007; operative 4–25–2007 pursuant to Government Code section 11343.4 (Register 2007, No. 17).
8. Amendment of definition of "OPSC Modernization Workload List" filed 5–17–2007; operative 5–17–2007 pursuant to Government Code section 11343.4 (Register 2007, No. 20).
9. Amendment of definition of "OPSC Modernization Workload List" filed 7–18–2007; operative 7–18–2007 pursuant to Government Code section 11343.4 (Register 2007, No. 29).
10. Amendment of definition of "OPSC Modernization Workload List" filed 8–31–2007; operative 8–31–2007 pursuant to Government Code section 11343.4 (Register 2007, No. 35).
11. Amendment of definition of "OSPC Modernization Workload List" filed 4–30–2008; operative 4–30–2008 pursuant to Government Code section 11343.4 (Register 2008, No. 18).

Article 2. FRP Application Procedure

§ 1859.203. Local Educational Agencies.

The following Local Educational Agencies (LEA's) that meet the requirements of Section 14101(18)(A) or (B) of the federal Elementary and Secondary Education Act of 1965 may apply for FRP grants:

(a) Public elementary, unified and high school districts that serve any combination of kindergarten through twelfth grade pupils.

(b) County Superintendent of Schools (CSS) that serve any combination of kindergarten through twelfth grade pupils.

NOTE: Authority cited: Sections 15502 and 15503, Government Code; and Section 12300, Education Code. Reference: Sections 321(b)(2), 321(c)(3), 321(i) and 321(j)(1), Public Law 106–554; Section 14101(18), Elementary and Secondary Education Act of 1965; and Section 47636, Education Code.

HISTORY

1. New article 2 (sections 1859.203–1859.207) and section filed 3–15–2002 as an emergency; operative 3–15–2002 (Register 2002, No. 11). A Certificate of Compliance must be transmitted to OAL by 7–15–2002 or emergency language will be repealed by operation of law on the following day.
2. New article 2 (sections 1859.203–1859.207) and section refiled 7–11–2002 as an emergency; operative 7–11–2002 (Register 2002, No. 28). A Certificate of Compliance must be transmitted to OAL by 11–8–2002 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 7–11–2002 order transmitted to OAL 11–6–2002 and filed 12–19–2002 (Register 2002, No. 51).

§ 1859.204. Charter Schools.

A charter school may be eligible to receive FRP grants through a qualifying LEA identified in Section 1859.203. Charter schools seeking FRP grants shall apply for FRP grants through the LEA that approved the school's charter.

If the State Board of Education approved the school's charter, the charter school may apply for FRP grants through any of the following LEA's:

(a) The LEA serving the same or similar grade levels where the charter school is physically located.

(b) Any LEA that will accept the charter school's request for FRP grants.

NOTE: Authority cited: Sections 15502 and 15503, Government Code; and Section 12300, Education Code. Reference: Sections 321(b)(2), 321(c)(3), 321(i) and 321(j)(1), Public Law 106–554; Section 14101(18), Elementary and Secondary Education Act of 1965; and Sections 47605–47608, Education Code.

HISTORY

1. New section filed 3–15–2002 as an emergency; operative 3–15–2002 (Register 2002, No. 11). A Certificate of Compliance must be transmitted to OAL by 7–15–2002 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 7–11–2002 as an emergency; operative 7–11–2002 (Register 2002, No. 28). A Certificate of Compliance must be transmitted to OAL by 11–8–2002 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 7–11–2002 order transmitted to OAL 11–6–2002 and filed 12–19–2002 (Register 2002, No. 51).

§ 1859.205. Non–Profit Private Schools.

A non–profit private school that meets the following criteria may be eligible to receive certain FRP grants through a qualifying LEA identified in Section 1859.203:

(a) It was organized and operates for nonprofit purposes pursuant to the Revenue and Taxation Code, Section 23701(d) and is exempt from taxes by meeting all requirements imposed by the Revenue and Taxation Code, Section 23701.

(b) It has at least 40 percent of its enrolled pupils defined as "Poor Children".

Qualifying non–profit private schools seeking FRP grants shall apply for FRP grants through the LEA serving the same or similar grade levels where the non–profit private school is physically located.

NOTE: Authority cited: Sections 15502 and 15503, Government Code; and Section 12300, Education Code. Reference: Sections 321(I), Public Law 106–554; Sections 33190–33193, Education Code; and Sections 23701 and 23701(d), Revenue and Taxation Code.

HISTORY

1. New section filed 3–15–2002 as an emergency; operative 3–15–2002 (Register 2002, No. 11). A Certificate of Compliance must be transmitted to OAL by 7–15–2002 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 7–11–2002 as an emergency; operative 7–11–2002 (Register 2002, No. 28). A Certificate of Compliance must be transmitted to OAL by 11–8–2002 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 7–11–2002 order transmitted to OAL 11–6–2002 and filed 12–19–2002 (Register 2002, No. 51).

§ 1859.206. Application for FRP Funding.

An eligible LEA seeking funding for a FRP grant shall complete and file with the OPSC, the *Application for Federal Grant*, Form SAB 60–01(New 01/02), which is incorporated by reference.

NOTE: Authority cited: Sections 15502 and 15503, Government Code; and Section 12300, Education Code. Reference: Section 321, Public Law 106–554.

HISTORY

1. New section filed 3–15–2002 as an emergency; operative 3–15–2002 (Register 2002, No. 11). A Certificate of Compliance must be transmitted to OAL by 7–15–2002 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 7–11–2002 as an emergency; operative 7–11–2002 (Register 2002, No. 28). A Certificate of Compliance must be transmitted to OAL by 11–8–2002 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 7–11–2002 order transmitted to OAL 11–6–2002 and filed 12–19–2002 (Register 2002, No. 51).

§ 1859.207. Application Submittals.

The Board shall accept applications until April 15, 2002 for the initial FRP appropriation. If all available funds are not apportioned to the eligible applications submitted by the date noted above, or there are funds determined available for apportionment pursuant to time limits on apportionments procedures prescribed in Section 1859.216 or audit procedures prescribed in Section 1859.218, the Board shall accept additional applications for apportionment of the remaining available funds for a period of 135 calendar days from the date the Board made the determination that the remaining funds are available. If additional funds are appropriated by the Federal Government, the Board shall accept applications for a period of 60 days after the funding is made available for apportionment.

NOTE: Authority cited: Sections 15502 and 15503, Government Code; and Section 12300, Education Code. Reference: Section 321, Public Law 106–554.

HISTORY

1. New section filed 3–15–2002 as an emergency; operative 3–15–2002 (Register 2002, No. 11). A Certificate of Compliance must be transmitted to OAL by 7–15–2002 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 7–11–2002 as an emergency; operative 7–11–2002 (Register 2002, No. 28). A Certificate of Compliance must be transmitted to OAL by 11–8–2002 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 7–11–2002 order transmitted to OAL 11–6–2002 and filed 12–19–2002 (Register 2002, No. 51).

Article 3. Permissible and Impermissible Uses of FRP Grants

§ 1859.208. Permissible Repair and Renovation.

The LEA is limited to the following repair and renovation and work in its application:

(a) For public and charter schools, the emergency repairs or renovation to public school facilities within the boundaries of the LEA and any qualifying charter school to ensure the health and safety of students and staff, including:

(1) Repairs, replacing, or installing roofs, electrical wiring, plumbing systems, or sewage systems.

(2) Repairing, replacing, or installing heating, ventilation, or air conditioning systems (including insulation).

(3) Bringing public schools into compliance with current fire and safety codes.

(4) School facility modifications necessary to comply with the Rehabilitation Act.

(5) School facility modifications necessary to comply with the ADA.

(6) Asbestos abatement or removal.

(b) For charter schools, in addition to repair and renovation work identified in subsection (a) above, the acquisition needs related to the building infrastructure for lease or purchase of a building, or building and land, only to the extent that it would supplement the amount of funds available from non–federal funds for these purposes. The building size is limited to no more than 75 square feet for each charter school pupil in grades kindergarten through eighth grade and no more than 90 square feet for each charter school pupil in grades 9–12 that will be housed in the facility acquired. The site size is limited to the acreage allowed in the California Department of Education Guide to School Site Analysis and Development 2000 Edition guidelines.

[The next page is 234.39.]

(c) For non-profit private schools, repair and renovation work is limited to any of the following:

(1) School facility modifications necessary to comply with the Rehabilitation Act.

(2) School facility modifications necessary to comply with the ADA.

(3) School facility asbestos abatement or removal.

(d) For Impacted LEA's, new facility construction.

NOTE: Authority cited: Sections 15502 and 15503, Government Code; and Section 12300, Education Code. Reference: Section 321, Public Law 106-554.

HISTORY

1. New article 3 (sections 1859.208-1859.211) and section filed 3-15-2002 as an emergency; operative 3-15-2002 (Register 2002, No. 11). A Certificate of Compliance must be transmitted to OAL by 7-15-2002 or emergency language will be repealed by operation of law on the following day.
2. New article 3 (sections 1859.208-1859.211) and section refiled 7-11-2002 as an emergency; operative 7-11-2002 (Register 2002, No. 28). A Certificate of Compliance must be transmitted to OAL by 11-8-2002 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 7-11-2002 order transmitted to OAL 11-6-2002 and filed 12-19-2002 (Register 2002, No. 51).

§ 1859.209. Permissible Project Costs.

The LEA will not be subject to any restrictions on construction allowances, design fees, construction management fees, tests, inspections or any other construction related activity; however, the use of FRP grant funds must comply with the federal Office of Management and Budget Circular A-87, dated August 29, 1997.

The FRP grant may be used for LEA administrative costs deemed necessary by the LEA for the proper and efficient performance and administration of the FRP grant application, not to exceed five percent of the grant award.

NOTE: Authority cited: Sections 15502 and 15503, Government Code; and Section 12300, Education Code. Reference: Section 321, Public Law 106-554; and Office of Management and Budget Circular A-87 (dated August 27, 1997).

HISTORY

1. New section filed 3-15-2002 as an emergency; operative 3-15-2002 (Register 2002, No. 11). A Certificate of Compliance must be transmitted to OAL by 7-15-2002 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 7-11-2002 as an emergency; operative 7-11-2002 (Register 2002, No. 28). A Certificate of Compliance must be transmitted to OAL by 11-8-2002 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 7-11-2002 order transmitted to OAL 11-6-2002 and filed 12-19-2002 (Register 2002, No. 51).

§ 1859.210. Impermissible Project Costs.

A FRP grant may not be used for any of the following:

(a) Maintenance costs.

(b) Construction of new facilities, except for Impacted LEA's.

(c) Stadiums or other facilities primarily used for athletic contests or exhibitions or other events for which admission is charged to the general public.

(d) Payment of debt service for any outstanding debt.

(e) Land acquisition, unless an existing building is on the land or a relocatable building is placed on the land within 90 days of the close of escrow, for a charter school.

(f) Renovation and/or repair work where the LEA received funding for the same work under any state funded school facility program.

NOTE: Authority cited: Sections 15502 and 15503, Government Code; and Section 12300, Education Code. Reference: Section 321, Public Law 106-554.

HISTORY

1. New section filed 3-15-2002 as an emergency; operative 3-15-2002 (Register 2002, No. 11). A Certificate of Compliance must be transmitted to OAL by 7-15-2002 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 7-11-2002 as an emergency; operative 7-11-2002 (Register 2002, No. 28). A Certificate of Compliance must be transmitted to OAL by 11-8-2002 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 7-11-2002 order transmitted to OAL 11-6-2002 and filed 12-19-2002 (Register 2002, No. 51).

§ 1859.211. Reimbursement.

FRP grants may be used to reimburse the LEA for permissible costs, as defined in Sections 1859.208 and 1859.209, expended or committed by the LEA prior to the apportionment of the application by the Board if:

(a) The expenditure or commitment was for the planning and/or design of the renovation and/or repair project.

(b) The expenditure or commitment for other than planning and/or design costs of the renovation and/or repair project was made after the adoption of these regulations by the Board.

NOTE: Authority cited: Sections 15502 and 15503, Government Code; and Section 12300, Education Code. Reference: Section 321, Public Law 106-554.

HISTORY

1. New section filed 3-15-2002 as an emergency; operative 3-15-2002 (Register 2002, No. 11). A Certificate of Compliance must be transmitted to OAL by 7-15-2002 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 7-11-2002 as an emergency; operative 7-11-2002 (Register 2002, No. 28). A Certificate of Compliance must be transmitted to OAL by 11-8-2002 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 7-11-2002 order transmitted to OAL 11-6-2002 and filed 12-19-2002 (Register 2002, No. 51).

Article 4. Funding Availability

§ 1859.212. Distribution of Funds.

(a) All funds made available for the FRP shall be distributed and made available for apportionment to certain LEA's in accordance with Section 321(b)(2)(B) of Public Law 106-554. The funding categories and the LEA's eligible to receive FRP grants in each of these categories are as follows:

(1) Category A. High Poverty LEA's.

(2) Category B. Rural LEA's that did not receive FRP grants under Category A.

(3) Category C. All other LEA's including LEA's that did not receive FRP grants under categories A or B.

(b) LEA's may only receive FRP grants from one of the funding categories noted above.

(c) The Board may transfer an amount not to exceed the difference of $7 million and the funds distributed to Category B pursuant to Subsection (a), from Category C to Category B.

(d) In addition to the amount available for transfer pursuant to Subsection (c), the Board shall transfer funds from Category C to Categories A or B as necessary to fully apportion an LEA's application that could be partially apportioned in that Category because the application had the highest number of points without being fully apportioned.

NOTE: Authority cited: Sections 15502 and 15503, Government Code; and Section 12300, Education Code. Reference: Section 321, Public Law 106-554.

HISTORY

1. New article 4 (sections 1859.212-1859.213) and section filed 3-15-2002 as an emergency; operative 3-15-2002 (Register 2002, No. 11). A Certificate of Compliance must be transmitted to OAL by 7-15-2002 or emergency language will be repealed by operation of law on the following day.
2. New article 4 (sections 1859.212-1859.213) and section refiled 7-11-2002 as an emergency; operative 7-11-2002 (Register 2002, No. 28). A Certificate of Compliance must be transmitted to OAL by 11-8-2002 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 7-11-2002 order transmitted to OAL 11-6-2002 and filed 12-19-2002 (Register 2002, No. 51).

§ 1859.213. Amount of the FRP Grant.

The maximum FRP grant for an LEA is limited to the lesser of (a) or (b) below:

(a) The amount requested in the *Application for Federal Grant*, Form SAB 60-01(New 01-02) submitted by the LEA.

(b) $75,000 plus $20 for each pupil identified in (1), (2), (3) and (4) below that attend a classroom for at least 50 percent of the school day. Do not include adult education pupils; pupils attending home school programs or pupils attending schools via the Internet.

(1) With the exception of special day class and community school pupils, pupils enrolled in the LEA as reported in the latest CBEDS report.

(2) Special day class and community school pupils reported to the California Department of Education in April prior to the latest CBEDS report.

(3) Pupils enrolled in a qualifying charter school(s) that requested funds as part of the LEA's application if the enrollment of the charter school(s) is not already included in the enrollment reports identified in (1) and (2) above.

(4) Pupils enrolled in a qualifying non–profit private school(s) that requested funds as part of the LEA's application. Non–profit private school pupil enrollment shall be the enrollment reported in the affidavit or statement filed with the Superintendent of Public Instruction as required by Education Code Section 33190.

The FRP grant amounts shown shall be deemed the full and final apportionment for the application. Any costs incurred by the LEA beyond the FRP grant shall be the responsibility of the LEA.

NOTE: Authority cited: Sections 15502 and 15503, Government Code; and Section 12300, Education Code. Reference: Section 321, Public Law 106–554; and Section 33190, Education Code.

HISTORY

1. New section filed 3–15–2002 as an emergency; operative 3–15–2002 (Register 2002, No. 11). A Certificate of Compliance must be transmitted to OAL by 7–15–2002 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 7–11–2002 as an emergency; operative 7–11–2002 (Register 2002, No. 28). A Certificate of Compliance must be transmitted to OAL by 11–8–2002 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 7–11–2002 order transmitted to OAL 11–6–2002 and filed 12–19–2002 (Register 2002, No. 51).

Article 5. Apportionment of Funds

§ 1859.214. Apportionment of Funds.

The OPSC shall report to the Board, after the date applications have been accepted as prescribed in Section 1859.207, the dollar amount of applications for FRP grants that have been received for each funding category prescribed in Section 1859.212. The Board shall approve and apportion FRP grants to the applications accepted from each of the funding categories based on the following:

(a) If the total dollar amount of applications accepted for a specific category are less than the funds distributed to that category pursuant to Section 1859.212, the Board shall approve and apportion FRP grants to all the applications accepted for that category. The excess funds shall remain in the respective category and shall be available for additional applications accepted by a subsequent date as prescribed in Section 1859.207.

(b) If the total dollar amount of the applications accepted for a specific category is more than the funds distributed to that category pursuant to Section 1859.212, the Board shall approve and apportion FRP grants to applications accepted for that category, in descending order, commencing with the application having the highest number of priority points for the LEA determined by all the following:

(1) The greater of (A) or (B) below:

(A) One point for each percent of pupils in the LEA defined as Poor Children. Round up.

(B) One point for every 330 pupils in the LEA defined as Poor Children, not to exceed 50 points. Round up.

(2) With the exception of CSS, one point for each percent of current outstanding bonded indebtedness of the LEA that was incurred for capital facility purposes in comparison to the maximum outstanding bonded capacity of the LEA, not to exceed 100 points. Round up. Outstanding bonded indebtedness includes that part of local general obligation bonds, Mello–Roos Bonds, School Facilities Improvement District Bonds and certificates of participation for which the LEA is paying a debt service for capital facility purposes at the time the application is submitted to the OPSC.

(3) If the LEA is a CSS, 25 points if the CSS is paying a debt service on a certificate of participation that was issued for capital facility purposes.

(4) If the application includes renovation and repair work for a charter school, one point for each percent of the FRP grant that will be used by the LEA for the charter school(s), not to exceed 50 points. Round up.

(5) 20 points for each year in the past five years that the LEA contributed at least 95 percent of its deferred maintenance match necessary to receive the maximum State funding authorized under the Deferred Maintenance Program pursuant to Education Code Section 17584

(6) 25 points if the LEA is not a High Poverty LEA.

If a portion of an application(s) could be partially apportioned in Categories A or B as prescribed in Section 1859.212 because the application(s) have the highest number of points without being apportioned, the Board shall transfer funds from Category C as prescribed in Section 1859.212 to either Category A or B as necessary to fully apportion the application(s).

NOTE: Authority cited: Sections 15502 and 15503, Government Code; and Section 12300, Education Code. Reference: Section 321, Public Law 106–554; and Section 17584, Education Code.

HISTORY

1. New article 5 (section 1859.214) and section filed 3–15–2002 as an emergency; operative 3–15–2002 (Register 2002, No. 11). A Certificate of Compliance must be transmitted to OAL by 7–15–2002 or emergency language will be repealed by operation of law on the following day.
2. New article 5 (section 1859.214) and section refiled 7–11–2002 as an emergency; operative 7–11–2002 (Register 2002, No. 28). A Certificate of Compliance must be transmitted to OAL by 11–8–2002 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 7–11–2002 order transmitted to OAL 11–6–2002 and filed 12–19–2002 (Register 2002, No. 51).

Article 6. Miscellaneous

§ 1859.215. Release of FRP Grants to the LEA.

The FRP grant will be released (i.e. warrant issued) to the LEA after submittal by the LEA of the *Fund Release Authorization*, Form SAB 60–02 (New 01/02), which is incorporated by reference, to the OPSC. The FRP grant will be released to the LEA as follows:

(a) The first 50 percent of the FRP grant after the LEA meets all the following criteria:

(1) The final plans for the project(s) to be constructed with the FRP grant are complete and approved by the Division of the State Architect, if required.

(2) The final plans and site acquisition (if applicable) for those projects(s) have been approved by the CDE, if required.

(3) The LEA has expended at least 50 percent of the FRP grant amount on the FRP project.

(b) The second 50 percent of the FRP grant will be released after the LEA has expended an amount equal to at least 100 percent of the FRP grant on the FRP project.

Once funds are released to the LEA, the LEA shall deposit the FRP funds into a separate fund to assure accountability of expenditures.

NOTE: Authority cited: Sections 15502 and 15503, Government Code; and Section 12300, Education Code. Reference: Section 321, Public Law 106–554.

HISTORY

1. New article 6 (sections 1859.215–1859.220) and section filed 3–15–2002 as an emergency; operative 3–15–2002 (Register 2002, No. 11). A Certificate of Compliance must be transmitted to OAL by 7–15–2002 or emergency language will be repealed by operation of law on the following day.
2. New article 6 (section 1859.215–1859.220) and section refiled 7–11–2002 as an emergency; operative 7–11–2002 (Register 2002, No. 28). A Certificate of Compliance must be transmitted to OAL by 11–8–2002 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 7–11–2002 order transmitted to OAL 11–6–2002 and filed 12–19–2002 (Register 2002, No. 51).

§ 1859.216. Time Limit for FRP Grant Apportionments.

Unless the Board makes a finding that the LEA has presented other evidence of circumstances that are beyond the control of the LEA which precludes progress or completion of the project(s) to be constructed with

the FRP grant, the FRP grant shall be reduced to permissible costs, as defined in Sections 1859.208 and 1859.209, incurred by the LEA if any of the following occur:

(a) The LEA does not meet the criteria for release of at least 50 percent of the FRP grant prescribed in subsection (a) of Section 1859.215 within one year from the date the FRP grant was apportioned by the Board.

(b) The LEA does not meet the criteria for release of 100 percent of the FRP grant within 180 calendar days from the date of the first fund release was issued by the Board pursuant to Subsection (a) of Section 1859.215.

NOTE: Authority cited: Sections 15502 and 15503, Government Code; and Section 12300, Education Code. Reference: Section 321, Public Law 106–554.

HISTORY

1. New section filed 3–15–2002 as an emergency; operative 3–15–2002 (Register 2002, No. 11). A Certificate of Compliance must be transmitted to OAL by 7–15–2002 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 7–11–2002 as an emergency; operative 7–11–2002 (Register 2002, No. 28). A Certificate of Compliance must be transmitted to OAL by 11–8–2002 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 7–11–2002 order transmitted to OAL 11–6–2002 and filed 12–19–2002 (Register 2002, No. 51).

§ 1859.217. Program Reporting Requirements.

An LEA receiving FRP grants shall submit the *Expenditure Report*, Form SAB 60–03 (New 01/02), which is incorporated by reference, within 270 calendar days of the first release of funds authorized by Section 1859.215. Local funds contributed to the FRP projects shall be reported on the *Expenditure Report*, Form SAB 60–03 (New 01/02). Failure to submit the *Expenditure Report*, Form SAB 60–03 (New 01/02) within the prescribed time period may result in the FRP grant being rescinded by the Board or reduced to permissible costs incurred, as defined in Sections 1859.208 and 1859.209.

NOTE: Authority cited: Sections 15502 and 15503, Government Code; and Section 12300, Education Code. Reference: Section 321, Public Law 106–554.

HISTORY

1. New section filed 3–15–2002 as an emergency; operative 3–15–2002 (Register 2002, No. 11). A Certificate of Compliance must be transmitted to OAL by 7–15–2002 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 7–11–2002 as an emergency; operative 7–11–2002 (Register 2002, No. 28). A Certificate of Compliance must be transmitted to OAL by 11–8–2002 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 7–11–2002 order transmitted to OAL 11–6–2002 and filed 12–19–2002 (Register 2002, No. 51).

§ 1859.218. Application Expenditures and Audit.

The FRP applications will be audited to ensure that the expenditures incurred by the LEA were made in accordance with the provisions prescribed in Sections 1859.208, 1859.209, 1859.210 and 1859.211. When the OPSC receives the *Expenditure Report*, Form SAB 60–03 (New 01/02), it must notify the LEA within 30 calendar days from the date of receipt of the report that an audit of those expenditures will be made by the OPSC. If the LEA is not notified by the OPSC within 30 calendar days of receipt of the report that an audit will be made, there will be no audit of the application by the OPSC and the expenditures reported by the LEA shall be deemed appropriate. If the LEA has been notified that an audit of the expenditures will be made by the OPSC, the OPSC shall complete the audit within 150 calendar days of the notification, unless additional information requested from the LEA has not been received.

The LEA shall be required to maintain all records that support all LEA certifications and expenditures for all costs associated with the FRP application for a period of not less than four years from the date the *Expenditure Report*, Form SAB 60–03 (New01/02) is submitted to the OPSC.

Should the OPSC conduct an audit of the LEA expenditures for the application and make a finding that some or all of the expenditures were not made in accordance with the provisions of Sections 1859.208, 1859.209, 1859.210 and 1859.211, the OPSC shall recommend to the Board that the FRP apportionment be adjusted based on the audit findings. Upon adoption of the audit findings by the Board, the LEA must submit a warrant for any amount identified as being owed within 60 days of the Board's action. If this does not occur, the OPSC shall initiate collection procedures from the School Fund Apportionment as outlined in Education Code Section 17076.10(c).

NOTE: Authority cited: Sections 15502 and 15503, Government Code; and Section 12300, Education Code. Reference: Section 321, Public Law 106–554; and Section 17076, Education Code.

HISTORY

1. New section filed 3–15–2002 as an emergency; operative 3–15–2002 (Register 2002, No. 11). A Certificate of Compliance must be transmitted to OAL by 7–15–2002 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 7–11–2002 as an emergency; operative 7–11–2002 (Register 2002, No. 28). A Certificate of Compliance must be transmitted to OAL by 11–8–2002 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 7–11–2002 order transmitted to OAL 11–6–2002 and filed 12–19–2002 (Register 2002, No. 51).

§ 1859.219. Accrued Interest on FRP Grants.

All interest earned on FRP grant funds that are deposited in the county sub–fund shall be returned to the Board. The Board shall return all interest earned to the federal agency that made the FRP appropriation to the state.

NOTE: Authority cited: Sections 15502 and 15503, Government Code; and Section 12300, Education Code. Reference: Section 321, Public Law 106–554.

HISTORY

1. New section filed 3–15–2002 as an emergency; operative 3–15–2002 (Register 2002, No. 11). A Certificate of Compliance must be transmitted to OAL by 7–15–2002 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 7–11–2002 as an emergency; operative 7–11–2002 (Register 2002, No. 28). A Certificate of Compliance must be transmitted to OAL by 11–8–2002 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 7–11–2002 order transmitted to OAL 11–6–2002 and filed 12–19–2002 (Register 2002, No. 51).

§ 1859.220. Duplication of Applications.

If the LEA's application for a FRP grant involves proposed work also included in a SFP modernization project currently included on the SFP Modernization Unfunded List or the OPSC Modernization Workload List, the LEA must certify that, after eliminating the work to be funded with the FRP grant from the SFP modernization project, the cost estimate for the remaining work in the modernization project is at least 60 percent of the total SFP grant amount provided by the state and the LEA's matching share. The cost estimate may not include planning, tests, inspection or furniture or equipment. If the LEA cannot make this certification, the SFP modernization project must be withdrawn prior to the release of any FRP grants to the LEA.

If the LEA's application for a FRP grant involves proposed work also included in a Deferred Maintenance Program (DMP) critical hardship project authorized by Education Code Section 17587 currently included on the DMP Critical Hardship Unfunded List or the OPSC Deferred Maintenance Critical Hardship Workload List, the critical hardship project must be withdrawn prior to the release of any FRP grants to the LEA.

If the LEA's application for a FRP grant involves work currently included on the LEA's Deferred Maintenance Five–Year Plan pursuant to Education Code Section 17591, the LEA must remove the projects that will be funded with the FRP grants from the Five–Year Plan prior to the release of any FRP grants to the LEA.

NOTE: Authority cited: Sections 15502 and 15503, Government Code; and Section 12300, Education Code. Reference: Section 321, Public Law 106–554; and Sections 17585 and 17591, Education Code.

HISTORY

1. New section filed 3–15–2002 as an emergency; operative 3–15–2002 (Register 2002, No. 11). A Certificate of Compliance must be transmitted to OAL by 7–15–2002 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 7–11–2002 as an emergency; operative 7–11–2002 (Register 2002, No. 28). A Certificate of Compliance must be transmitted to OAL by 11–8–2002 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 7–11–2002 order transmitted to OAL 11–6–2002 and filed 12–19–2002 (Register 2002, No. 51).

Subgroup 5.7. School Facilities Needs Assessment and Emergency Repair Program

Article 1. General Provisions and Definitions

§ 1859.300. Purpose.

These regulations implement the School Facilities Needs Assessment Grant Program and the Emergency Repair Program.

NOTE: Authority cited: Section 17592.73, Education Code. Reference: Sections 17592.70 and 17592.71, Education Code.

HISTORY

1. New subgroup 5.7 (articles 1–3, sections 1859.300–1859.329), article 1 (sections 1859.300–1859.302) and section filed 5–31–2005 as an emergency; operative 5–31–2005 (Register 2005, No. 22). A Certificate of Compliance must be transmitted to OAL by 9–28–2005 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 5–31–2005 order transmitted to OAL 9–23–2005 and filed 11–7–2005 (Register 2005, No. 45).

§ 1859.301. Director of General Services.

The Director of General Services, or the Director's legal designee, shall perform all acts necessary to carry out the provisions of these regulations except such functions reserved to the Board and to other agencies by law or by Sections 1859.300 through 1859.329, inclusive. These acts to be performed include, but are not limited to, entering into contracts to administer the regulations.

NOTE: Authority cited: Section 17592.73, Education Code. Reference: Section 17070.20, Education Code.

HISTORY

1. New section filed 5–31–2005 as an emergency; operative 5–31–2005 (Register 2005, No. 22). A Certificate of Compliance must be transmitted to OAL by 9–28–2005 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 5–31–2005 order transmitted to OAL 9–23–2005 and filed 11–7–2005 (Register 2005, No. 45).

§ 1859.302. Definitions.

For the purposes of these Subgroup 5.7 regulations, the terms set forth below shall have the following meanings, subject to the provisions of the Act:

"Accepted Application(s)" means a Local Educational Agency (LEA) has submitted the application and all documents to the Office of Public School Construction (OPSC) that are required to be submitted with the application as identified in the General Information and Required Documentation section of the Form SAB 61–03, *Grant Request,* (Rev. 01/07), as appropriate, and the OPSC has accepted the application.

"Act" means California Education Code (EC) Sections 17592.70 through 17592.73, inclusive, and 41207.5.

"Apportionment" means an allocation of funds by the Board for eligible School Facilities Needs Assessment Grant Program or Emergency Repair Program costs.

"Board" means the State Allocation Board as established by Section 15490 of the Government Code.

"CBEDS Report" means the enrollment information provided through the California Basic Educational Data System (CBEDS) by the LEA to the California Department of Education (CDE).

"Certification of Eligibility" means the on–line worksheet provided by the OPSC and accessible through the OPSC Website at www.opsc.dgs.ca.gov for the purpose of a one–time determination of whether a school site meets the provisions of Section 1859.311(b).

"Cosmetic Repairs" means repairs that enhance the physical environment of the school and are not directly related to the mitigation of a health and safety hazard.

"Deferred Maintenance Program (DMP)" means the State deferred maintenance funding authorized by EC Sections 17582 through 17588, inclusive.

"Emergency Facilities Needs" means structures or systems that in their present condition pose an immediate threat to the health and safety of pupils and staff while at school.

"Emergency Repair Program (ERP)" means the repair program implemented under the Act, Senate Bill 6, Chapter 899, Statutes of 2004.

"ERP Grant" means an Apportionment provided by the State to the LEA for eligible costs, pursuant to EC Section 17592.72 and Regulation Sections 1859.323, 1859.323.1, and 1859.323.2.

"Employee" means an individual that is a classified or certificated temporary, probationary or permanent employee receiving a warrant as payment from the LEA.

"Expended" means work has been completed, or services rendered, and a warrant has been issued for payment.

"Form SAB 61–01" means the *Needs Assessment Report*, Form SAB 61–01 (New 01/05), which is incorporated by reference.

"Form SAB 61–02" means the *Expenditure Report*, Form SAB 61–02 (New 02/05), which is incorporated by reference.

"Form SAB 61–03" means the *Grant Request*, Form SAB 61–03 (Rev. 01/07), which is incorporated by reference.

"Form SAB 61–04" means the *Expenditure Report*, Form SAB 61–04 (New 01/07), which is incorporated by reference.

"Grant" means an apportionment for a request for an Emergency Repair Program project and can include reimbursement for projects already completed.

"Grant Adjustment" means an increase or a decrease in the Grant after review of the Form SAB 61–04.

"Interim Evaluation Instrument" means the evaluation tool developed pursuant to EC Section 17002.

"LEA Representative" means a member of the LEA staff or other agent authorized to execute and file application(s) with the Board on behalf of the LEA and/or act as liaison between the Board and the LEA.

"Like–Kind Material/System" means a building material or system that is substantially identical in function to the existing building material or system to be replaced.

"Local Educational Agency (LEA)" means a school district or county office of education meeting the requirements of Section 14101(18)(A) or (B) of the federal Elementary and Secondary Education Act of 1965.

"Needs Assessment" means the review of the facilities conducted pursuant to the Section 1859.315(c), the Form SAB 61–01 and EC Section 17592.70.

"Needs Assessment Grant" means the funding provided pursuant to EC Section 17592.70(c) and Sections 1859.312 and 1859.313.

"Nonessential Repairs" means work that is not directly related to the mitigation of a health and safety hazard including, but not limited to, repairs to correct items not in compliance with Title 24 of the California Code of Regulations that existed prior to and are not an Emergency Facilities Needs.

"Office of Public School Construction (OPSC)" means the State office within the Department of General Services that assists the Board as necessary and administers the School Facilities Needs Assessment Grant Program and the Emergency Repair Program.

"Pupil" means a student enrolled in any grade Kindergarten through grade twelve including individuals with exceptional needs meeting the provisions of EC Section 56026.

"Ready for Apportionment" means a review of an Accepted Application has been completed by the OPSC and it has been determined that it meets all requirements of law for an Apportionment, and the OPSC will recommend approval to the Board.

"Routine Restricted Maintenance Account" means the account into which funds are deposited by LEAs pursuant to EC Section 17070.75.

"School Facilities Emergency Repair Account" means the account established by the OPSC pursuant to EC Section 17592.71(a).

"School Facilities Needs Assessment Grant Program" means the one-time assessment of school facilities implemented under the Act, Senate Bill 6, Chapter 899, Statutes of 2004.

"School Facility Program (SFP)" means the Leroy F. Greene School Facilities Act of 1998, commencing with EC Section 17070.10.

"Section" means a section in these Subgroup 5.7 regulations.

"Unfunded List" means an information list of unfunded projects including projects partially funded on a prorated basis pursuant to Section 1859.322(b)(1).

"Web-Based Needs Assessment" means the on-line Form SAB 61-01 provided by the OPSC and accessible through the OPSC Website at www.opsc.dgs.ca.gov for the one-time purpose of submitting the Needs Assessment data electronically.

"Web-Based Progress Report Survey" means the on-line worksheet provided by the OPSC and accessible through the OPSC Website at www.opsc.dgs.ca.gov for the purpose of submitting a one-time report on the progress made toward completing the Needs Assessment.

NOTE: Authority cited: Section 17592.73, Education Code. Reference: Sections 17592.70, 17592.71, 17592.72 and 17592.73, Education Code.

HISTORY

1. New section filed 5-31-2005 as an emergency; operative 5-31-2005 (Register 2005, No. 22). A Certificate of Compliance must be transmitted to OAL by 9-28-2005 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 5-31-2005 order, including reordering of definitions to correct alphabetical order, transmitted to OAL 9-23-2005 and filed 11-7-2005 (Register 2005, No. 45).
3. Amendment of definitions of "Accepted Application(s)," "Apportionment," Emergency Repair Program Grant," "Form SAB 61-03," "School Facility Program" and "Unfunded List" and new definitions of "Form SAB 61-04," "Grant" and "Grant Adjustment" filed 7-2-2007 as an emergency; operative 7-2-2007 (Register 2007, No. 27). A Certificate of Compliance must be transmitted to OAL by 12-31-2007 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7-2-2007 order transmitted to OAL 11-5-2007 and filed 12-18-2007 (Register 2007, No. 51).

Article 2. School Facilities Needs Assessment Grant Program

§ 1859.310. General.

A school site that qualifies for the School Facilities Needs Assessment Grant Program according to the provisions of EC Section 17592.70(b) shall be allocated funds by the Board in order to conduct a one-time comprehensive school facilities needs assessment. An LEA that receives funds under this Article shall be required to complete and submit a Web-Based Needs Assessment to the OPSC for each school site meeting the provisions of Section 1859.311.

NOTE: Authority cited: Section 17592.73, Education Code. Reference: Section 17592.70, Education Code.

HISTORY

1. New article 2 (sections 1859.310-1859.319) and section filed 5-31-2005 as an emergency; operative 5-31-2005 (Register 2005, No. 22). A Certificate of Compliance must be transmitted to OAL by 9-28-2005 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 5-31-2005 order transmitted to OAL 9-23-2005 and filed 11-7-2005 (Register 2005, No. 45).

§ 1859.311. Eligible Schools.

An LEA that has a school site meeting all of the following is eligible for the School Facilities Needs Assessment Grant Program:

(a) The school was identified on the list published by the CDE pursuant to EC Section 17592.70(b).

(b) The school was newly constructed prior to January 1, 2000.

NOTE: Authority cited: Section 17592.73, Education Code. Reference: Section 17592.70, Education Code.

HISTORY

1. New section filed 5-31-2005 as an emergency; operative 5-31-2005 (Register 2005, No. 22). A Certificate of Compliance must be transmitted to OAL by 9-28-2005 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 5-31-2005 order transmitted to OAL 9-23-2005 and filed 11-7-2005 (Register 2005, No. 45).

§ 1859.312. Apportionment of Funds.

The Board shall allocate ten dollars ($10) per Pupil enrolled in eligible school sites, according to the 2003 October CBEDS Report, for each school site identified by CDE pursuant to Section 1859.311(a). A minimum allocation of seven thousand five hundred dollars ($7,500) shall be made for each school site. Once an Apportionment has been made by the Board and the OPSC has received the Certification of Eligibility, funds for eligible school sites will be released by OPSC to the LEA with jurisdiction over the school site(s) along with requirements for the money to be spent at the eligible school site(s) in accordance with Section 1859.313. Any school site not meeting the provisions of Section 1859.311(b) is ineligible for funding under these regulations. Apportionments shall be reduced by the grant amount allocated for ineligible school sites upon receipt of the Certification of Eligibility.

NOTE: Authority cited: Section 17592.73, Education Code Reference: Section 17592.70, Education Code.

HISTORY

1. New section filed 5-31-2005 as an emergency; operative 5-31-2005 (Register 2005, No. 22). A Certificate of Compliance must be transmitted to OAL by 9-28-2005 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 5-31-2005 order transmitted to OAL 9-23-2005 and filed 11-7-2005 (Register 2005, No. 45).

§ 1859.313. Use of Needs Assessment Grant Funds.

The LEA shall only use the Needs Assessment Grant funds for the following:

(a) Unbudgeted administrative or third party costs incurred as a result of performing the Needs Assessment.

(b) Repairs identified in Part V of the Form SAB 61-01 at any eligible school site within the LEA where a Needs Assessment has been completed.

Apportionments may be rescinded or reduced by the grant amount provided for each eligible school site where the LEA fails to comply with the provisions of Sections 1859.310 and 1859.315.

NOTE: Authority cited: Section 17592.73, Education Code. Reference: Section 17592.70, Education Code.

HISTORY

1. New section filed 5-31-2005 as an emergency; operative 5-31-2005 (Register 2005, No. 22). A Certificate of Compliance must be transmitted to OAL by 9-28-2005 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 5-31-2005 order transmitted to OAL 9-23-2005 and filed 11-7-2005 (Register 2005, No. 45).

§ 1859.314. Qualifications of the Inspector.

The Needs Assessment must be prepared in accordance with all of the following:

(a) The person(s) performing or supervising the Needs Assessment must have general knowledge of school facilities construction, operation, and maintenance and either of the following:

(1) A minimum of three years of experience with cost estimation and building systems life cycle analysis; or

(2) An Architect, Engineer, or General Contractor license under California law.

(b) The person(s) meeting or being supervised by individuals that meet the conditions of (a), above, must personally conduct the assessment on the school site(s).

(c) The individual(s) performing or supervising the Needs Assessment must be independent third parties and may not be Employee(s) of the LEA with jurisdiction over the school site for which the Needs Assessment is being performed.

NOTE: Authority cited: Section 17592.73, Education Code. Reference: Section 17592.73, Education Code.

HISTORY

1. New section filed 5-31-2005 as an emergency; operative 5-31-2005 (Register 2005, No. 22). A Certificate of Compliance must be transmitted to OAL by 9-28-2005 or emergency language will be repealed by operation of law on the following day.

2. Certificate of Compliance as to 5–31–2005 order transmitted to OAL 9–23–2005 and filed 11–7–2005 (Register 2005, No. 45).

§ 1859.315. Program Reporting Requirements.

An LEA that receives School Facilities Needs Assessment Grant funds pursuant to Section 1859.312 shall:

(a) Complete a Certification of Eligibility and submit it to the OPSC. Each LEA shall submit one certification to the OPSC. Fund release(s) shall be processed by the OPSC for all eligible sites upon receipt of the complete signed and dated Certification of Eligibility.

(b) Complete a Web–Based Progress Report Survey and submit it to the OPSC. Each LEA shall submit one survey unless the Needs Assessment for all eligible school sites has been completed pursuant to subsection (c), below:

(c) Complete a Web–Based Needs Assessment for each applicable site and submit it to the OPSC by January 1, 2006.

(d) Complete Form SAB 61–02 to report all expenditures made with Needs Assessment Grant funds on an LEA–wide basis and submit it to the OPSC by January 1, 2007.

NOTE: Authority cited: 17592.73, Education Code. Reference: Sections 17592.70 and 17592.73, Education Code.

HISTORY

1. New section filed 5–31–2005 as an emergency; operative 5–31–2005 (Register 2005, No. 22). A Certificate of Compliance must be transmitted to OAL by 9–28–2005 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 5–31–2005 order transmitted to OAL 9–23–2005 and filed 11–7–2005 (Register 2005, No. 45).

§ 1859.316. Needs Assessment Grant Expenditures and Audit.

The projects shall be subject to audit to ensure that expenditures incurred by the LEA were made in accordance with the provisions of Sections 1859.313 and 1859.314. Any funds not Expended on the Needs Assessment or eligible repairs at the time of submittal of the Form SAB 61–02 shall be returned to the OPSC.

After the OPSC receives the expenditure report from the LEA on the Form SAB 61–02 and the LEA is notified of an impending Needs Assessment audit, an audit of the expenditures by the OPSC shall commence within six months. The OPSC shall complete the audit within six months of the notification unless additional information requested from the LEA has not been received.

Should the OPSC conduct an audit of the expenditures and information, which may include certifications, for expenditures made pursuant to Section 1859.310 and make a finding that some or all of the expenditures were not made in accordance with the provisions of Section 1859.313, the OPSC shall recommend to the Board that the Apportionment be adjusted based on the audit findings. Upon adoption of the audit findings by the Board, the LEA must submit a warrant for any amount identified as being owed within 30 days of the Board's action. If this does not occur, the OPSC shall initiate collection procedures.

NOTE: Authority cited: Section 17592.73, Education Code. Reference: Section 17592.70, Education Code.

HISTORY

1. New section filed 5–31–2005 as an emergency; operative 5–31–2005 (Register 2005, No. 22). A Certificate of Compliance must be transmitted to OAL by 9–28–2005 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 5–31–2005 order transmitted to OAL 9–23–2005 and filed 11–7–2005 (Register 2005, No. 45).

§ 1859.317. Duplication of Needs Assessment Grant Expenditures.

If the LEA's expenditures for the Needs Assessment Grant involve proposed work also included in a SFP or DMP project, the LEA must ensure all of the following:

(a) No work or expenditures are duplicated.

(b) After eliminating the work to be funded with the Needs Assessment Grant from the SFP or DMP project, the remaining work continues to meet the SFP or DMP requirements.

NOTE: Authority cited: Section 17592.73, Education Code. Reference: Section 17592.73, Education Code.

HISTORY

1. New section filed 5–31–2005 as an emergency; operative 5–31–2005 (Register 2005, No. 22). A Certificate of Compliance must be transmitted to OAL by 9–28–2005 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 5–31–2005 order transmitted to OAL 9–23–2005 and filed 11–7–2005 (Register 2005, No. 45).

§ 1859.318. Supplement, Not Supplant, Needs Assessment Grant Funds.

Needs Assessment Grant funds remaining after the completion of the Needs Assessment must be used for repairs authorized in Section 1859.313(b) and must be used to supplement, not supplant, funds already available for routine, deferred, planned and scheduled maintenance, or emergency repairs of school facilities. In accordance with this requirement, the LEA must comply with all of the following in the 2005/2006 fiscal year:

(a) Deposit the funding level required pursuant to EC Section 17070.75 in the Routine Restricted Maintenance Account, if participating in the SFP.

(b) Deposit an amount equal to the State's matching share of the basic grant pursuant to EC Section 17584, if participating in the DMP.

(c) If either (a) or (b) are not applicable, the district must budget an amount not less than the average maintenance budget for the three previous fiscal years.

(d) In an effort to ensure that each of its schools is maintained in good repair, the LEA shall expend or encumber by issuing a purchase order or entering into a legal contract or document, or dedicate funds from the sources listed in subsections (a) through (c), above, to correct problems identified in the facilities inspection system required pursuant to EC Section 17070.75(e), which may include items listed in the DMP five–year plan, or the Interim Evaluation Instrument that do not qualify for funding as described in EC Section 17592.72(c)(1). For those projects eligible for ERP funding, the LEA may seek funding at any time provided that the LEA has or will meet the above requirements.

NOTE: Authority cited: Section 17592.73, Education Code. Reference: Sections 17592.72 and 17592.73, Education Code.

HISTORY

1. New section filed 5–31–2005 as an emergency; operative 5–31–2005 (Register 2005, No. 22). A Certificate of Compliance must be transmitted to OAL by 9–28–2005 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 5–31–2005 order transmitted to OAL 9–23–2005 and filed 11–7–2005 (Register 2005, No. 45).
3. Amendment of subsection (d) and NOTE filed 7–2–2007 as an emergency; operative 7–2–2007 (Register 2007, No. 27). A Certificate of Compliance must be transmitted to OAL by 12–31–2007 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7–2–2007 order transmitted to OAL 11–5–2007 and filed 12–18–2007 (Register 2007, No. 51).

§ 1859.319. Remaining Needs Assessment Grant Funds.

Any funds unapportioned or returned to the OPSC shall be transferred into the School Facilities Emergency Repair Account.

NOTE: Authority cited: Section 17592.73, Education Code. Reference: Section 41207.5, Education Code.

HISTORY

1. New section filed 5–31–2005 as an emergency; operative 5–31–2005 (Register 2005, No. 22). A Certificate of Compliance must be transmitted to OAL by 9–28–2005 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 5–31–2005 order transmitted to OAL 9–23–2005 and filed 11–7–2005 (Register 2005, No. 45).

Article 3. Emergency Repair Program

§ 1859.320. General.

An LEA seeking an ERP Grant for funding of costs for repairs or replacement of existing structural components or building systems that pose(d) a health and safety threat to the pupils or staff while at school, as

defined by EC Section 17592.72(c)(1), shall submit to the OPSC a completed Form SAB 61–03.

NOTE: Authority cited: Section 17592.73, Education Code. Reference: Section 17592.72, Education Code.

HISTORY

1. New article 3 (sections 1859.320–1859.329) and section filed 5–31–2005 as an emergency; operative 5–31–2005 (Register 2005, No. 22). A Certificate of Compliance must be transmitted to OAL by 9–28–2005 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 5–31–2005 order transmitted to OAL 9–23–2005 and filed 11–7–2005 (Register 2005, No. 45).
3. Amendment filed 7–2–2007 as an emergency; operative 7–2–2007 (Register 2007, No. 27). A Certificate of Compliance must be transmitted to OAL by 12–31–2007 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7–2–2007 order transmitted to OAL 11–5–2007 and filed 12–18–2007 (Register 2007, No. 51).

§ 1859.321. Eligible Schools.

Eligible schools are determined as follows:

(a) An LEA that has a school site meeting all of the following is eligible to submit a Form SAB 61–03:

(1) The school was identified on the list published by the CDE pursuant to EC Section 17592.72.

(2) The school was newly constructed prior to January 1, 2000.

(b) Commencing with the 2007/08 Fiscal Year and for subsequent fiscal years, an LEA that has a school site that is identified by the CDE pursuant to EC Section 17592.72 is eligible to submit a Form SAB 61–03.

NOTE: Authority cited: Section 17592.73, Education Code. Reference: Section 17592.72, Education Code.

HISTORY

1. New section filed 5–31–2005 as an emergency; operative 5–31–2005 (Register 2005, No. 22). A Certificate of Compliance must be transmitted to OAL by 9–28–2005 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 5–31–2005 order transmitted to OAL 9–23–2005 and filed 11–7–2005 (Register 2005, No. 45).
3. Amendment filed 7–2–2007 as an emergency; operative 7–2–2007 (Register 2007, No. 27). A Certificate of Compliance must be transmitted to OAL by 12–31–2007 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7–2–2007 order transmitted to OAL 11–5–2007 and filed 12–18–2007 (Register 2007, No. 51).

§ 1859.322. Emergency Repair Program Project Funding Order.

The Board shall make apportionments on a monthly basis for Grants in the order of receipt of an Accepted Application and for Grant Adjustments in the order of receipt of a complete Form SAB 61–04, as follows:

(a) If sufficient funding is available to provide funding to all applications presented that month, all applications will receive an Apportionment of the eligible costs.

(b) If funding is insufficient in any given month:

(1) Grants will be provided to each application on a prorated basis with the balance placed on the Unfunded List, unless the proration will result in funding less than 25 percent of the eligible project costs. The proration shall be determined by dividing the total funds available by the total eligible costs of all applications Ready for Apportionment. All Grant Adjustments will be placed on the Unfunded List.

(2) If the proration, as determined in (1) above, will be less than 25 percent of the eligible project costs, the Board shall provide Grant funding at 100 percent of the eligible project costs of the Grants based on date order received until funds are no longer available and the remaining Grant applications shall be placed on the Unfunded List. All Grant Adjustments will be placed on the Unfunded List.

(3) The Board will continue to accept and process applications for the purpose of developing an Unfunded List based on the order of receipt of the Accepted Applications.

When funds become available, projects on the Unfunded List will be apportioned in the order of date received. From available funds, Grants will be funded first and Grant Adjustments will be funded second. After an Apportionment has been made by the Board, funds will be released automatically by the OPSC. If local funds have been expended, the Apportionment must be used by the LEA to reimburse the special reserve fund and the original source of funds used to make the LEA expenditures for the ERP project.

Once all ERP funds have been depleted, any applications that have received a prorated Apportionment, a Grant, or a Grant Adjustment will be deemed a full and final Apportionment any applications remaining fully unfunded on the Unfunded List will be returned to the LEA, and the Unfunded List shall be dissolved.

NOTE: Authority cited: Section 17592.73, Education Code. Reference: Sections 17592.71 and 17592.72, Education Code.

HISTORY

1. New section filed 5–31–2005 as an emergency; operative 5–31–2005 (Register 2005, No. 22). A Certificate of Compliance must be transmitted to OAL by 9–28–2005 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 5–31–2005 order transmitted to OAL 9–23–2005 and filed 11–7–2005 (Register 2005, No. 45).
3. Amendment of section and NOTE filed 7–2–2007 as an emergency; operative 7–2–2007 (Register 2007, No. 27). A Certificate of Compliance must be transmitted to OAL by 12–31–2007 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7–2–2007 order transmitted to OAL 11–5–2007 and filed 12–18–2007 (Register 2007, No. 51).

§ 1859.323. Eligible Project Costs.

Funding will be provided to meet the LEA share of the repair costs of Emergency Facilities Needs as defined in Education Code Section 17592.72(c)(1). To be eligible for funding consideration, the total project cost request on the Form SAB 61–03 must be $5000 or higher unless the LEA can justify its request for a lesser amount. Funding of eligible projects costs shall be limited to the minimum work required on existing structural components or building systems to mitigate the health and safety hazard, plus application documentation preparation and submittal costs, if any, as permissible under Regulation Section 1859.323.2(j).

Replacement of existing structural components or building systems is permissible provided the project is in compliance with provisions of Section 1859.323.1.

NOTE: Authority cited: Section 17592.73, Education Code. Reference: Section 17592.72, Education Code.

HISTORY

1. New section filed 5–31–2005 as an emergency; operative 5–31–2005 (Register 2005, No. 22). A Certificate of Compliance must be transmitted to OAL by 9–28–2005 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 5–31–2005 order transmitted to OAL 9–23–2005 and filed 11–7–2005 (Register 2005, No. 45).
3. Amendment of first paragraph filed 7–2–2007 as an emergency; operative 7–2–2007 (Register 2007, No. 27). A Certificate of Compliance must be transmitted to OAL by 12–31–2007 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7–2–2007 order transmitted to OAL 11–5–2007 and filed 12–18–2007 (Register 2007, No. 51).

§ 1859.323.1. Replacement Projects.

Funding of eligible replacement costs shall be provided only if it is more cost–effective to replace rather than repair a structural component or building system that poses a health or safety threat to pupils or staff while at school. For purposes of this section, it is more cost–effective to replace a structural component or building system when the estimated cost of an eligible repair is at least 75 percent of the cost of replacement.

If the cost to repair the component or system is less than 75 percent of the current replacement cost and the district elects to replace the component or system, then Grant funding shall be equal to the estimated cost of repair. Projects that use this option are not eligible for an increase to the Grant at the time of Grant Adjustment pursuant to Section 1859.324.1.

If the request is for replacement components or systems, a cost comparison must be prepared. The cost comparison shall consist of a repair cost estimate and a Like–Kind Material/System replacement cost estimate provided by qualified individual(s) or firm(s).

Replacement of a structural component or building system shall be limited to the use of a Like–Kind Material/System except when the work

in the project proposes to use an alternative building material or system which is requested by the LEA. The cost comparison must also include the estimated cost of replacement using an alternative building material or system. If replacement with an alternate material/system is more costly than replacement with a Like–Kind Material/System, the LEA will receive funding for the alternate material/system in an amount not to exceed the cost of replacement with a Like–Kind Material/System. If it is determined that the only possible replacement is with the alternate material/system, the LEA will receive funding for the actual cost of replacement with the alternate material/system.

If the request is for replacement components or systems that included structural deficiencies, the cost comparison must also include a report from a licensed design professional identifying the minimum work necessary to obtain Division of the State Architect's approval.

NOTE: Authority cited: Section 17592.73, Education Code. Reference: Section 17592.72, Education Code.

HISTORY

1. New section filed 5–31–2005 as an emergency; operative 5–31–2005 (Register 2005, No. 22). A Certificate of Compliance must be transmitted to OAL by 9–28–2005 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 5–31–2005 order transmitted to OAL 9–23–2005 and filed 11–7–2005 (Register 2005, No. 45).
3. Amendment filed 7–2–2007 as an emergency; operative 7–2–2007 (Register 2007, No. 27). A Certificate of Compliance must be transmitted to OAL by 12–31–2007 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7–2–2007 order transmitted to OAL 11–5–2007 and filed 12–18–2007 (Register 2007, No. 51).

§ 1859.323.2. Ineligible Expenditures.

An Emergency Repair Program Grant may not be used for any of the following:

(a) New square footage, components, or building systems that did not previously exist.

(b) Nonessential Repairs.

(c) Cosmetic Repairs.

(d) Land acquisition.

(e) Furniture and equipment.

(f) Salaries of LEA employees except when permitted pursuant to Public Contract Code Section 20114.

(g) Costs covered under warranty or by insurance.

(h) Costs normally borne by others including, but not limited to, public utility companies.

(i) Costs to repair or replace facilities with structural damage if the project meets the facility hardship or rehabilitation criteria set forth in School Facility Program Regulation Sections 1859.82 and 1859.83(e).

(j) Application documentation preparation and submittal costs that exceed two percent of the total project cost or $5,000, whichever is less. The total project cost shall be calculated by adding all other eligible costs and re–calculated upon the grant adjustment determination pursuant to Section 1859.324.1.

NOTE: Authority cited: Section 17592.73, Education Code. Reference: Section 17592.72, Education Code.

HISTORY

1. New section filed 5–31–2005 as an emergency; operative 5–31–2005 (Register 2005, No. 22). A Certificate of Compliance must be transmitted to OAL by 9–28–2005 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 5–31–2005 order transmitted to OAL 9–23–2005 and filed 11–7–2005 (Register 2005, No. 45).
3. New subsection (j) filed 7–2–2007 as an emergency; operative 7–2–2007 (Register 2007, No. 27). A Certificate of Compliance must be transmitted to OAL by 12–31–2007 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7–2–2007 order transmitted to OAL 11–5–2007 and filed 12–18–2007 (Register 2007, No. 51).

§ 1859.324. Funding.

An Emergency Repair Program Grant shall be used to fund the LEA's eligible costs, as defined by Sections 1859.323 and 1859.323.1 as follows:

(a) For schools ranked in deciles one to three, inclusive, based on the 2003 Academic Performance Index that meet requirements defined by Section 1859.321(a) and all of the following provisions:

(1) If contracts for services or work were signed for the project, contracts must have been entered into on or after September 29, 2004.

(2) Funds must have been Expended on or after September 29, 2004.

(3) Accepted Applications on or before June 30, 2007. If these ERP regulations are not in effect by March 31, 2007, LEAs may submit applications for 90 days following the effective date of the regulations.

(b) For schools ranked in deciles one to three, inclusive, based on the 2006 Academic Performance Index that meet requirements defined by 1859.321(b) and all of the following provisions:

(1) If contracts for services or work were signed for the project, contracts must have been entered into on or after July 1, 2005.

(2) Funds must have been Expended on or after July 1, 2005.

(3) Accepted Applications on or before June 30, 2010.

(c) For schools ranked in deciles one to three, inclusive, based on the 2009 Academic Performance Index that meet requirements defined by 1859.321(b) and all of the following provisions:

(1) If contracts for services or work were signed for the project, contracts must have been entered into on or after July 1, 2008.

(2) Funds must have been Expended on or after July 1, 2008.

(3) Accepted Applications on or before June 30, 2013.

NOTE: Authority cited: Section 17592.73, Education Code. Reference: Section 17592.72, Education Code.

HISTORY

1. New section filed 5–31–2005 as an emergency; operative 5–31–2005 (Register 2005, No. 22). A Certificate of Compliance must be transmitted to OAL by 9–28–2005 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 5–31–2005 order transmitted to OAL 9–23–2005 and filed 11–7–2005 (Register 2005, No. 45).
3. Amendment of section heading and section filed 7–2–2007 as an emergency; operative 7–2–2007 (Register 2007, No. 27). A Certificate of Compliance must be transmitted to OAL by 12–31–2007 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7–2–2007 order transmitted to OAL 11–5–2007 and filed 12–18–2007 (Register 2007, No. 51).

§ 1859.324.1. Grant Adjustments.

After review of a Form SAB 61–04, projects that require a Grant Adjustment will be presented to the Board for approval based upon one of the following review determinations:

(a) If the expenditures are less than the Grant, the Grant will be deemed the full and final apportionment for the project and the OPSC shall recommend to the Board that the Apportionment be reduced by the amount of savings realized by the LEA. The savings, which include any interest earned on the Grant funds, either declared by the LEA or determined by the OPSC, must be returned to the State. Upon the approval of the recommendation by the Board, the LEA must submit a warrant for any amount identified as being owed within 60 days of the Board's action. If the LEA fails to make the required payment within 60 days, the OPSC shall notify the Controller and the LEA in writing, and the Controller shall deduct an amount equal to the amount received by the LEA under this subdivision from the LEA's next principal apportionment or apportionments of state funds to the LEA, other than basic aid apportionments required by Section 6 of Article IX of the California Constitution. Any amounts obtained pursuant to this Section shall be deposited into the School Facilities Emergency Repair Account and will be made available for the funding of future ERP Grants and Grant Adjustments.

(b) If the expenditures are greater than the Grant apportionment, provided the additional expenditures are associated with the project's original scope, the OPSC shall recommend to the Board that the Apportionment be increased. The Grant Adjustment will be deemed as the full and final apportionment for the project.

(c) If the expenditures are equal to the Grant, no further Board action is necessary. The Grant will be deemed as the full and final apportionment for the project.

NOTE: Authority cited: Section 17592.73, Education Code. Reference: Sections 17592.72 and 17592.73, Education Code.

HISTORY

1. New section filed 7–2–2007 as an emergency; operative 7–2–2007 (Register 2007, No. 27). A Certificate of Compliance must be transmitted to OAL by 12–31–2007 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 7–2–2007 order transmitted to OAL 11–5–2007 and filed 12–18–2007 (Register 2007, No. 51).

§ 1859.325. School Facility Due Diligence.

To ensure that the LEA is exercising due diligence in the administration of its facility accounts and is using an Emergency Repair Program Apportionment to supplement existing funding for the maintenance of school facilities, the OPSC may conduct a review of the LEA's facility maintenance accounts pursuant to the provisions of Section 1859.328.

In the event that the Board finds that an LEA is failing to exercise due diligence or supplanting has occurred, the Board shall notify the county superintendent of schools in which the LEA is located and may deny future funding under these regulations.

NOTE: Authority cited: Section 17592.73, Education Code. Reference: Section 17592.72, Education Code.

HISTORY

1. New section filed 5–31–2005 as an emergency; operative 5–31–2005 (Register 2005, No. 22). A Certificate of Compliance must be transmitted to OAL by 9–28–2005 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 5–31–2005 order transmitted to OAL 9–23–2005 and filed 11–7–2005 (Register 2005, No. 45).

§ 1859.326. Expenditures and Audit.

The projects shall be subject to audit to ensure that the expenditures incurred by the LEA were made in accordance with the provisions of Sections 1859.323, 1859.323.1, 1859.323.2, 1859.324, 1859.327, and 1859.328.

After a full and final Apportionment has been made pursuant to Regulation Section 1859.324.1, should the OPSC notify the LEA of an impending ERP audit of the expenditures reported on the Form SAB 61–04, an audit by the OPSC shall commence within six months. Once the audit has commenced, the OPSC shall complete the audit within six months of the notification unless additional information requested from the LEA has not been received.

Should the OPSC conduct an audit of the expenditures and information provided by the LEA, which may include certifications, for the project and make a finding that some or all of the expenditures were not made in accordance with the provisions of EC Section 17592.72(c) and Regulation Sections 1859.323 through 1859.329 inclusive, the OPSC shall recommend to the Board that the apportionment be adjusted based on the audit findings. Upon adoption of the audit findings by the Board, the LEA must submit a warrant for any amount identified as being owed within 60 days of the Board's action. If this does not occur, the OPSC shall initiate collection procedures as delineated in Section 1859.324.1(a).

NOTE: Authority cited: Section 17592.73, Education Code. Reference: Sections 17592.72 and 17592.73, Education Code.

HISTORY

1. New section filed 5–31–2005 as an emergency; operative 5–31–2005 (Register 2005, No. 22). A Certificate of Compliance must be transmitted to OAL by 9–28–2005 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 5–31–2005 order transmitted to OAL 9–23–2005 and filed 11–7–2005 (Register 2005, No. 45).
3. Amendment of section heading and section filed 7–2–2007 as an emergency; operative 7–2–2007 (Register 2007, No. 27). A Certificate of Compliance must be transmitted to OAL by 12–31–2007 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7–2–2007 order, including amendment of final paragraph, transmitted to OAL 11–5–2007 and filed 12–18–2007 (Register 2007, No. 51).

§ 1859.327. Duplication of Emergency Repair Program Expenditures.

If the LEA's expenditures for the Emergency Repair Program Grant involve proposed work also included in a SFP or DMP project, the LEA must ensure all of the following:

(a) No work or expenditures are duplicated.

(b) After eliminating the work to be funded with the Emergency Repair Program Grant from the SFP or DMP project, the remaining work continues to meet the SFP or DMP requirements.

NOTE: Authority cited: Section 17592.73, Education Code. Reference: Section 17592.72, Education Code.

HISTORY

1. New section filed 5–31–2005 as an emergency; operative 5–31–2005 (Register 2005, No. 22). A Certificate of Compliance must be transmitted to OAL by 9–28–2005 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 5–31–2005 order transmitted to OAL 9–23–2005 and filed 11–7–2005 (Register 2005, No. 45).

§ 1859.328. Supplement, Not Supplant, Emergency Repair Program Grant Funds.

Emergency Repair Program Grant funds must be used to supplement, not supplant funds already available for routine, deferred, planned and scheduled maintenance, or emergency repairs of school facilities. In accordance with these requirements, the LEA must comply with all of the following at the time the Accepted Application and the Form SAB 61–04 are submitted to the OPSC:

(a) Deposit the funding level required for the current fiscal year pursuant to EC Section 17070.75 in the Routine Restricted Maintenance Account, if participating in the SFP.

(b) If participating in the DMP, the district:

(1) For applications submitted prior to January 1, 2006, has deposited an amount equal to the State's matching share of the maximum basic grant, calculated pursuant to EC Section 17584, for the latest available determination; and

(2) For applications submitted on or after January 1, 2006, has deposited an amount equal to the maximum basic grant, calculated pursuant to EC Section 17584, for the latest available determination; and

(3) Will deposit an amount equal to the maximum basic grant, calculated pursuant to EC Section 17584, for the next scheduled determination.

(4) Shall not transfer excess local funds in accordance with EC Section 17583 from the deposits made as specified in (2) and (3), above.

(c) If either (a) or (b) are not applicable, the district must budget for the current fiscal year an amount not less than the average maintenance budget for the three previous fiscal years.

(d) In an effort to ensure that each of its schools is maintained in good repair, the LEA shall expend or encumber by issuing a purchase order or entering into a legal contract or document, or dedicate funds from the sources listed in subsections (a) through (c), above, to correct problems identified in the facilities inspection system required pursuant to EC Section 17070.75(e), which may include items listed in the DMP five-year plan, or the Interim Evaluation Instrument that do not qualify for funding as described in EC Section 17592.72(c)(1). For those projects eligible for ERP funding, the LEA may seek funding at any time provided that the LEA has or will meet the above requirements.

NOTE: Authority cited: Section 17592.73, Education Code. Reference: Sections 17592.72 and 17592.73, Education Code.

HISTORY

1. New section filed 5–31–2005 as an emergency; operative 5–31–2005 (Register 2005, No. 22). A Certificate of Compliance must be transmitted to OAL by 9–28–2005 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 5–31–2005 order transmitted to OAL 9–23–2005 and filed 11–7–2005 (Register 2005, No. 45).
3. Amendment of first paragraph and subsection (d) filed 7–2–2007 as an emergency; operative 7–2–2007 (Register 2007, No. 27). A Certificate of Compliance must be transmitted to OAL by 12–31–2007 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7–2–2007 order transmitted to OAL 11–5–2007 and filed 12–18–2007 (Register 2007, No. 51).

§ 1859.329. Withdrawal and Amendment of Applications.

In the event an LEA has omitted costs from the Form SAB 61–03 at the time of submittal and the project has not received a Grant Apportionment from the Board, the LEA may withdraw its application and resub-

mit a revised Form SAB 61–03. The resubmitted application shall receive a new processing date by the OPSC. If the Board has already provided a Grant Apportionment for the project, the LEA may request the additional cost on the Form SAB 61–04. Additional expenditures must be associated with the project's original scope. If the Board has already provided a Grant Adjustment for the project, the LEA will not be able to receive additional funding for the project and the Apportionment provided by the Board will be considered full and final.

NOTE: Authority cited: Section 17592.73, Education Code. Reference: Sections 17592.72 and 17592.73, Education Code.

HISTORY

1. New section filed 5–31–2005 as an emergency; operative 5–31–2005 (Register 2005, No. 22). A Certificate of Compliance must be transmitted to OAL by 9–28–2005 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 5–31–2005 order transmitted to OAL 9–23–2005 and filed 11–7–2005 (Register 2005, No. 45).
3. Amendment filed 7–2–2007 as an emergency; operative 7–2–2007 (Register 2007, No. 27). A Certificate of Compliance must be transmitted to OAL by 12–31–2007 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7–2–2007 order transmitted to OAL 11–5–2007 and filed 12–18–2007 (Register 2007, No. 51).

§ 1859.330. Time Limit on Grant Apportionment.

The LEAs that receive ERP Grants shall comply with all of the following provisions:

(a) When the Division of the State Architect's review and approval is not required, within 12 months of the Grant apportionment the LEA shall:

(1) Complete the emergency repair or replacement; and

(2) Submit the Form SAB 61–04 to the OPSC.

(b) When the Division of the State Architect's review and approval is required, within 18 months of the Grant apportionment the LEA shall:

(1) Complete the emergency repair or replacement; and

(2) Submit the Form SAB 61–04 to the OPSC.

If the LEA does not meet the Time Limit on Grant Apportionment, the Apportionment will be rescinded without further Board action. Within 60 days of the OPSC notification, the LEA must submit to the State a warrant for the amount of the Apportionment and any interest earned on State funds. If this does not occur, the OPSC shall initiate collection procedures as delineated in 1859.324.1(a). Any rescinded funds returned to the State will be made available for the funding of future ERP Grants and Grant Adjustments. The LEA may re–file Form SAB 61–03 to request a Grant for the rescinded projects provided it meets the provisions of Section 1859.324 at the time of re–filing.

NOTE: Authority cited: Sections 17592.72 and 17592.73, Education Code. Reference: Section 17592.72, Education Code.

HISTORY

1. New section filed 7–2–2007 as an emergency; operative 7–2–2007 (Register 2007, No. 27). A Certificate of Compliance must be transmitted to OAL by 12–31–2007 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 7–2–2007 order transmitted to OAL 11–5–2007 and filed 12–18–2007 (Register 2007, No. 51).

Subgroup 6. School Housing Aid for Compensatory Education Purposes

NOTE: Authority cited: Section 16009, Education Code. Reference: Sections 16210–16215, Education Code.

HISTORY

1. Amendment of subsection (a) and NOTE filed 4–29–77; effective thirtieth day thereafter (Register 77, No. 18). For prior history, see Register 69, No. 11.
2. Repealer of Subgroup 6 (Articles 1–8, Sections 1860–1860.21) filed 10–27–82; effective thirtieth day thereafter (Register 82, No. 44).

Subgroup 7. School Housing Aid for Districts Impacted by Seasonal Agricultural Employment

Article 1. Definitions

§ 1861. Definitions.

(a) For the purposes of these regulations, the terms set forth below shall have the following meanings:

(1) Article 5.

Article 5, Chapter 8, Part 10 of Division 1 of the Education Code.

(2) Board.

State Allocation Board.

(3) DCE.

Director of Compensatory Education.

(4) Eligible School District.

Any school district:

(A) Whose application for aid under Article 5 has the approval of DCE; and

(B) Which, as determined by the DCE, experiences emergency increases in school enrollments, because of the influx for temporary periods in the school year of large numbers of persons employed in seasonal agricultural work, of such magnitude as to make it impossible or impractical to accommodate the additional pupils in existing school buildings and facilities available to the district.

(5) Executive Officer. Executive Officer of the State Allocation Board.

(6) "Expenditures may be made to a school district pursuant to the provisions of Sections . . . 3 (Article 5) of this Act," as contained in Section 4 of Chapter 106, first extraordinary session of 1966.

This clause is deemed to authorize any expenditures under Article 5.

(7) "The means specified by Section 16042" as used in Section 16231. This shall be deemed to mean only the form which methods of availability may take and not the various collateral provisions contained in Section 16042, which are peculiar to that section.

(8) Original District. The first district who purchases or constructs portables as the agent of the State.

(9) Portable School and Classroom Buildings. As used in Article 5, this term shall be deemed to include furnishings therefor which are deemed necessary by the Board for the approved use of such buildings.

(10) Sections referred to. Unless otherwise specified, sections referred to in these rules shall be deemed to mean sections of the Education Code.

(11) Moving Expenses. May include any costs required for dismantling from one site and re–erection on another site prepared for the portables involved.

NOTE: Authority cited: Section 16009, Education Code. Reference: Sections 16230–16234, Education Code.

HISTORY

1. New Subgroup 7 (Sections 1861, 1861.1 through 1861.25), filed 7–15–66 as an emergency; effective upon filing (Register 66, No. 22).
2. Certificate of Compliance—Section 11422.1, Government Code, filed 9–30–66 (Register 66, No. 33).
3. Amendment of subsections (a)(1) and (a)(7) and NOTE filed 4–29–77; effective thirtieth day thereafter (Register 77, No. 18).

Article 2. Method of Availability of Portable Facilities

§ 1861.1. Acquisition by Board and Conveyancing to District.

(a) Upon application by a school district approved by DCE, the Board may expend monies available under Article 5 for the acquisition by the Board of new or used portable buildings and related facilities and equipment, and thereafter convey the same to the eligible district. The convey-

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ancing may take the form of sale, lease, outright grant, or other suitable form of conveyancing as determined by the Board, and shall be subject to such terms and conditions as may be approved by the Board.

Article 3. Eligibility Requirements

§ 1861.2. Grade Levels.

(a) Portable classroom buildings and related facilities may be made available for any grade level approved by DEC.

§ 1861.3. Approval of DCE.

(a) No lease of portable facilities shall be approved by the Board unless the property upon which the facilities are to be placed and the location thereof, together with the facilities to be leased and the length of such lease, including options for extensions, have been approved by DCE, provided that the rental consideration and all other provisions of such a lease shall be within the discretion of the Board. The approval of a lease of facilities by DCE shall be deemed to be the approval of the lease or any portion of said facilities for the term approved by DCE, unless DCE indicates to the contrary.

§ 1861.4. Priorities.

(a) No application shall be acted upon by the Board under Article 5, unless DCE has indicated in connection therewith what, if any, priorities such application shall be given. The Board shall not accumulate applications for priority purposes, but shall act upon them as received from DCE.

§ 1861.5. Consultation with the Advice of DCE.

(a) Whenever consultation with and advice of DCE is required under Article 5, the Executive Officer or his delegate shall obtain the same prior to the submission of any recommended application to the Board. Such advice shall be reported to the Board by the Executive Officer.

Article 4. Facilities

§ 1861.6. Eligible Facilities.

(a) Facilities which may be made available pursuant to Article 5 include:

(1) Classroom and related portable buildings. (These may be purchased by the Board as completed units or constructed by the Board on sites on which they are to be placed.)

(2) Site preparation and installation costs necessary for the placement of portable buildings.

(3) On or off-site utility extension and other utility costs (including connection fees) necessary for the proper functioning of portable buildings, but excluding monthly utility service fees.

(4) Furniture and equipment.

(5) Maintenance and repair costs of portable buildings, not otherwise required to be provided by a district.

(6) Costs of moving by original vendor of portables to original site and assembly thereon. Costs of subsequent dismantling and moving as deemed warranted by the Board, providing that the Board may exercise its option to enter into contracts for the moving of portables as hereinafter specified in Section 1861.17.

§ 1861.7. Site Restoration.

(a) The Board will not pay site restoration costs after termination of use of facilities by a district pursuant to this article provided that it may in its discretion do so in conjunction with the preparation of said site for the receipt of subsequent facilities conveyed to such district by the Board.

§ 1861.8. Site Acquisition.

(a) The Board will not acquire a site for a district under this article.

§ 1861.9. Quality of Facilities.

(a) The facilities provided under Article 5 shall be of a quality and cost approvable by the DCE and the Board.

§ 1861.10. Furniture and Equipment.

(a) Furniture and Equipment provided under this Article shall be of a kind, quality, quantity and cost approvable by the DCE and the Board.

Article 5. Applications

§ 1861.11. Form of Application.

(a) To obtain aid under this Article, the following must be submitted:

(1) Application on forms provided by the Board.

(2) Layout plans showing site preparation and stationing of portables in question. Such plans should clearly identify the location of such site.

(3) A statement by the district specifying how any costs auxiliary to the buildings themselves, but necessary for their use, are to be met.

(4) A statement of the estimated costs of all of the facilities requested by the district. The estimate should be made by a person currently employed or retained by the district deemed competent for this purpose by profession, training, or experience.

Article 6. Financial Requirements

§ 1861.12. Payments by Districts Creditable Against Rental Obligations.

(a) Whenever it deems the same appropriate, the Board may authorize or direct a district to pay any portion of the construction, purchase or installation costs of portables and apply such costs against rentals of any portables under Article 5, (or other consideration due the State) whether arising in the period commencing after such payments, or in a subsequent period.

Article 7. Acceptance of Aid

§ 1861.13. Acceptance of Aid.

(a) The acceptance of any aid pursuant to Article 5 shall be deemed subject to:

(1) The terms of said Article.

(2) The regulations pertaining thereto.

(3) The terms and conditions of any resolution of the Board making such aid available.

(4) Any bi-lateral contract between an affected district and the Board.

(b) In addition, a school district by the acceptance of aid pursuant to this article agrees to hold the State of California harmless from any claims asserted against the State by virtue of alleged negligence of the district or third parties in the construction, installation, maintenance, or transit of portable facilities.

§ 1861.14. Method of Payment.

(a) Each payment for facilities approved by the Board, when required to be made, shall be certified by the Executive Officer to the State Controller who shall draw his warrant for such payment in the manner prescribed by law.

Article 8. Moving, Storage, Maintenance

§ 1861.15. Delivery and/or Installation of Portables by Original Vendor.

(a) The original district may, subject to approval of the Board, contract with the vendor of portables for the delivery thereof to the original site and the installation of the same thereon, or both.

§ 1861.16. Moving of Portables by Districts; Obtaining of Bids.

(a) The obtaining of bids and the awarding of a contract by a district for the moving of portables leased under this Article shall be in the manner prescribed by the Education Code, and shall be subject to approval by the Board.

(b) The aware of a bid may be made only to a licensed mover having adequate equipment for the purpose and experienced in the moving of similar structures.

§ 1861.17. Option of State to Enter into Moving Contracts with Vendors or Other Movers.

(a) Except in cases where the Board determines otherwise, any district, to whom portables which are reposing in the district of a former lessee are leased, shall dismantle and move the same at its own expense from where they are situated. However, such district shall receive a credit for such expenses against the rental it would be obliged to pay during the lease period immediately following the moving. In the event the aforesaid credit exceeds the amount of such rental, no reimbursement will be paid the district by the State.

(b) Notwithstanding the foregoing, if the Board deems it more advantageous to the State, it may authorize the Executive Officer, after consultation with the State Traffic Manager, to enter into moving contracts with vendors or other movers for the moving of particular portables (or portables generally) acquired pursuant to Article 5 provided that, in the event it exercises such option, nothing herein shall be construed as preventing the Board from recouping any of the costs of such moving through rentals of said portables to districts affected by this article.

§ 1861.18. Removal of Portable Facilities.

(a) Facilities leased by the Board for location on a particular site shall not be removed for any purpose from said site without the approval of the Board.

§ 1861.19. Storage of Buildings by District Pending Next Lease.

(a) The Executive Officer shall include in any lease agreement with a district otherwise authorized by the Board a provision that the lessee shall allow buildings leased to remain on its premises free of cost to the State, after the expiration of its lease and prior to the time the next lessee of such buildings agrees to remove the same, provided that nothing herein shall be construed to prevent the district on which such buildings are to remain in the interim to use them during such period, if permitted by the terms of the State's agreement therewith.

§ 1861.20. Maintenance and Repair Costs Not Otherwise Provided by District.

(a) Where no district is obligated to provide for the maintenance and repair of portable buildings, or if so obligated fails to do so, the Executive Officer is authorized to expend such sums as he deems appropriate for that purpose from funds appropriated pursuant to this chapter, provided that nothing herein shall be construed to relieve any district from any obligation arising out of any contract entered into pursuant to this chapter.

Article 9. Miscellaneous Provisions

§ 1861.21. Leases Discretionary with Respect to Any Particular School District.

(a) Subject to the provisions of these rules, and in particular to Section 1861.3 thereof, whether a lease shall be entered into with respect to any particular school district, and the provisions of said lease, are within the discretion of the Board.

§ 1861.22. Affidavits of Vendors Regarding Security Interests; Discharge of Same.

(a) No funds shall be authorized by the Executive Officer for the purchase of portable units (including furnishings contained therein) unless the vendor files an affidavit with the Executive Officer in close proximity to the time of the proposed transfer of funds by the State that there are no chattel mortgages, title retentions, security interest, or liens of any kind against such property, recorded or unrecorded, and that he has no knowledge of any that will be given or obtained. In the event that such affidavits cannot be furnished because of the existence of security interests or liens of any kind, suitable provisions shall be made by the vendor for the release of such security interests prior to or at the time of the payment to such vendors.

§ 1861.23. Insurance.

(a) The Executive Officer may insure in the name of the State, through the insurance adviser of the Department of General Services, portable buildings belonging to the State against vandalism, theft of furnishings, and damage in transit (and against such other risks as he deems advisable, except fire insurance prohibited under the terms of Section 11007 of the Government Code) to such extent and in such amounts as the Executive Officer deems appropriate.

HISTORY

1. Editorial correction of section number (Register 80, No. 26).

§ 1861.24. Actions of the Board to Be Deemed to Embody Provisions of Resolution Forms Approved by It for That Purpose.

(a) Actions of the Board pursuant to Article 5 shall be deemed to incorporate all of the provisions of the resolution form adopted by the Board for the purposes of such action. The Executive Officer shall utilize such resolution form in advising the affected school district of the Board action, but is authorized to modify such form before transmitting it to the district to the extent the specific action of the Board is inconsistent with such form.

HISTORY

1. Editorial correction of section number (Register 80, No. 26).

§ 1861.25. Exceptions.

(a) Exceptions may be made to these regulations where the board finds that the application thereof would be inequitable in practice or would result in an undue hardship on the pupils of the district affected.

Subgroup 8. Children's Center Construction Aid

HISTORY

1. Repealer of Subgroup 8 (Sections 1862–1862.14) filed 12–30–76; effective thirtieth day thereafter (Register 77, No. 1). For prior history see Register 69, Nos. 2, 15, 25, 42, and 50.

Subgroup 8.5. Emergency School Classroom Law of 1979

Article 1. Definitions

§ 1862.50. Definitions.

(a) For the purposes of these regulations, the terms set forth below shall have the following meanings:

Chapter 25. Chapter 25, Part 10, Education Code.

Board. State Allocation Board.

Executive Officer. Executive Officer of the State Allocation Board.

Eligible District Any school district or county superintendent of schools which demonstrates a need for additional classroom facilities in accordance with priorities established by the Board.

Portable Classrooms. Single classroom factory–built buildings which are constructed in accordance with performance specifications adopted by the Board.

Authorized Agent. A person authorized to act on behalf of the governing board of the eligible district in matters relating to an application for lease of portable classrooms.

NOTE: Authority cited: Sections 17785–17795, Education Code. Reference: Sections 17785–17795, Education Code.

HISTORY

1. New Subgroup 8.5 (Sections 1862.50–1862.56) filed 8–23–79; effective thirtieth day thereafter (Register 79, No.34). A Certificate of Compliance must be filed within 120 days or emergency language will be repealed on 12–21–79.

2. Certificate of Compliance transmitted to OAH 12–19–79 and filed 1–17–80 (Register 80, No. 3)

Article 2. Acquisition of Portable Classrooms

§ 1862.51. Acquisition of Portable Classrooms by the Board.

(a) The Board may from time to time as it determines the need in accordance with priorities adopted herein authorize the Office of Procurement of the Department of General Services to acquire portable classrooms the Board deems will be required by eligible school districts for up to the next twelve months.

For each portable classroom so acquired a minimum of furniture and equipment necessary to make the classroom functional may be acquired by the Board. The buildings shall be placed on the school site and connected to the nearest electrical energy source at State expense.

NOTE: Authority cited: Sections 17785–17795, Education Code. Reference: Sections 17785–17795, Education Code.

HISTORY

1. Amendment filed 8–7–86; effective thirtieth day thereafter (Register 86, No. 32).

Article 2.5.

§ 1862.51.1. Intent.

NOTE: Authority cited: Section 17788, Education Code. Reference: Sections 10115 et seq., Public Contract Code.

HISTORY

1. New section filed 4–18–91; operative 4–18–91 (Register 91, No. 20).
2. Repealer filed 3–13–96 as an emergency; operative 3–13–96 (Register 96, No. 11). A Certificate of Compliance must be transmitted to OAL by 7–11–96 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 3–13–96 order transmitted to OAL 6–14–96 and filed 7–23–96 (Register 96, No. 30).

§ 1862.51.2. Regulatory Provisions.

NOTE: Authority cited: Section 17788, Education Code. Reference: Sections 10115 et seq., Public Contract Code, and Section 17788.5, Education Code.

HISTORY

1. New section filed 4–18–91; operative 4–18–91 (Register 91, No. 20).
2. Repealer filed 3–13–96 as an emergency; operative 3–13–96 (Register 96, No. 11). A Certificate of Compliance must be transmitted to OAL by 7–11–96 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 3–13–96 order transmitted to OAL 6–14–96 and filed 7–23–96 (Register 96, No. 30).

Article 3. Applications for Lease

§ 1862.52. Form of Application.

(a) Applications for lease of portable classrooms pursuant to Chapter 25, shall contain the following:

A resolution on forms provided by the Board, by the governing board of the eligible district authorizing the filing of an application and the signing of a lease agreement or agreements for such numbers of portable classrooms as the Board may approve. The leases shall contain such terms and conditions as are required by existing law and by these regulations.

A completed application on forms provided by the Board.

Layout plans clearly showing the location on the site of the proposed portable classroom buildings as well as the location of existing buildings.

A certification by the authorized agent that the district has hired or will hire a teacher for each portable classroom leased to the district for the term of the lease.

A certification or other evidence, satisfactory to the Board, that the district has no available bond proceeds which could be used for the purchase of classroom facilities.

NOTE: Authority cited: Sections 17785–17795, Education Code. Reference: Sections 17785–17795, Education Code.

HISTORY

1. Amendment filed 10–31–86; effective thirtieth day thereafter (Register 86, No. 44).

Article 4. Lease Agreements

§ 1862.53. Lease Agreements.

Lease agreements executed by the authorized agent of the school district shall be subject to such conditions as may be required by the board in addition to the following:

A year to year renewable term beginning September 1 and ending August 31 of each year.

Lease payments of $2,000 per year for each portable classroom. The first year rental shall be prorated on a 12 month basis from the date of installation to the following August 31. Payments are to be made upon execution or renewal of each lease.

The district shall be required at its own expense to provide a near flat surface, not exceeding 9 inches in grade from the highest to the lowest point, for placement of each portable classroom. Access to the site shall also be provided by the district at its own expense.

The district shall be responsible to the State for any damages occurring to the portable classrooms and shall keep them insured, at its own expense, to the benefit of the State, at all times against fire and lightning, with extended coverage, and vandalism and malicious mischief, for the full insurable value of the property less any deductible amount for which the district is willing to accept such responsibility. The district shall at its own expense undertake all necessary maintenance repairs, renewal and replacement to ensure that the portable classrooms, furniture and equipment are at all times kept in good repair, working order and condition.

The district shall hold the State of California harmless from any claims asserted against the State by virtue of alleged negligence of the district or third parties in the operation or maintenance of portable classrooms.

Facilities leased by the Board for location on a particular site may not be altered, relocated or removed from the site without approval of the Board, nor shall any interest held by the district under this lease be assignable.

Upon expiration of a lease, the district shall allow buildings covered by such lease to remain in place on the site free of cost to the State for a period not to exceed 120 days, pending removal by the State.

NOTE: Authority cited: Sections 17785–17795, Education Code. Reference: Sections 17785–17795, Education Code.

HISTORY

1. Amendment filed 10–31–86; effective thirtieth day thereafter (Register 86, No. 44).

Article 5. Priorities

§ 1862.54. Priorities.

Portable classrooms shall be approved and made available to those districts in the following order:

(a) A demonstrated need based upon loading all existing classrooms in the district with the average class sizes shown below using a one year projection of the district's current enrollment converted to average daily attendance by a .97 factor:

	Average Class Sizes:		
Kindergarten	55 *	9–12	27
1–8	30	Special Education	10 **

* If the district's kindergarten has traditionally met as single session, load at 27 (provide documentation with application/worksheet).

** Alternative loading utilizing average class sizes shown in Board regulation 1865.34 of Title 2, Div. 2, Ch. 3, Subch. 4, Group 1, may be used.

(b) A demonstrated need based upon approval of a new construction project on a districtwide basis pursuant to the Lease Purchase Law of 1976. Said district shall be eligible to lease at least the same number of emergency portable classrooms as approved new teaching stations under the Lease–Purchase Program if the need for applications filed pursuant to subdivision (a) has been met for a period of at least 30 days.

(c) A demonstrated need based upon approval of a new construction project on a High School Attendance Area basis pursuant to the Lease–Purchase Law of 1976. Said district shall be eligible to lease at least the same number of emergency portable classrooms as approved new teaching stations under the Lease–Purchase Program provided a determination has been made by the Board that no portable facilities are available in other High School Attendance Areas within the district which could be economically and practicably utilized as emergency classroom facilities and the need for applications filed pursuant to subdivision (b) has been met for a period of at least 30 days.

(d) A district that is not otherwise eligible pursuant to (a), (b), or (c) and agrees to hire an additional teacher for each additional portable classroom placed in the district and the need for applications filed pursuant to subdivision (c) has been met for a period of at least 30 days.

NOTE: Authority cited: Section 15503, Government Code; and Sections 17785–17795, Education Code. Reference: Sections 17785–17795, Education Code.

HISTORY

1. Amendment filed 8–7–86; effective thirtieth day thereafter (Register 86, No. 32).

Article 6. Miscellaneous Provisions

§ 1862.55. Maintenance and Repair Costs Not Otherwise Provided by District.

(a) Where a district is not obligated to provide for the maintenance and repair of portable buildings, or if obligated and fails to do so, the Executive Officer is authorized to expend such sums as he deems appropriate for that purpose from funds appropriated pursuant to this chapter, provided that nothing herein shall be construed to relieve any district from any obligation arising out of any contract entered into pursuant to this chapter.

NOTE: Authority cited: Sections 17785–17795, Education Code. Reference: Sections 17785–17795, Education Code.

§ 1862.56. Exceptions.

(a) Exceptions may be made to these regulations where the Board finds that the application thereof would be inequitable in practice or would result in an undue hardship on the pupils of the district affected.

NOTE: Authority cited: Sections 17785–17795, Education Code. Reference: Sections 17785–17795, Education Code.

Subgroup 9. School Housing Aid for Rehabilitation and Replacement of Structurally Inadequate School Facilities

Article 1. Definitions

§ 1863.1. Definitions.

(a) In connection with the administration of the provisions of Article 9, Chapter 8, Part 10, Division 1, Education Code, and for the purposes of these regulations, the terms set forth below shall have the following meanings:

(1) The Act. Article 9, Chapter 8, Part 10, Division 1, Education Code.

(2) Application. A request for an apportionment for a specific purpose, or purposes, as provided by the Act and these regulations, on forms prescribed by the State Allocation Board, properly executed, together with such other information as may be required.

(3) Apportionment or Conditional Apportionment. Amount of State funds apportioned by the Board for purposes o the application. This amount is based on the formula in Section 16330 of the Education Code. The ratio of State and district matching funds will remain fixed for all apportionments for each application as the ratio established when the application is approved.

(4) Assessed Valuation. For the purposes of determining the basic computed State matching ratio of assistance under Section 16330, the modified assessed valuation for the preceding fiscal year as determined in accordance with Sections 41200, et seq. of the Education Code.

(5) Authorized Agent. An official or staff member of the school district or the office of the county superintendent of schools appointed and authorized by resolution of the governing board of the school district to represent that body in all matters pertaining to the Act other than those requiring action by the governing board of the school district.

(6) Board. The State Allocation Board.

(7) District. An applicant school district.

(8) Executive Officer. The Executive Officer of the State Allocation Board.

(9) Facility. All or a portion of any parcel of land, on or off–site improvement, utility, building or other building area, or furniture and equipment.

(10) Project. The purpose or purposes for which a school district has applied for an apportionment or apportionments under the provisions of the Act.

(11) Replacement. The acquisition or construction of a facility or facilities through an apportionment to replace all or a portion of a substandard school.

(12) Rehabilitation. The reconstruction, renovation, alteration and/or conversion of a substandard building.

(13) Sections. All sections referred to herein, unless the context indicates otherwise, shall be deemed to refer to sections of the Education Code.

(14) Substandard Building. A school building which, pursuant to a determination made by the Board, does not comply with the provisions of the Field Act (Sections 39140 through 39156, Education Code) and constitutes a threat to the safety of those using the facility because of structural instability.

(15) Grade Level. For the purposes of Section 16330, the grade level of a project application made by a high school district, including any project which contains grades 7 and 8, shall be deemed to be the high school grade level. The grade level of a project application made by an elementary school district, including any project which contains grades 7 and 8, shall be deemed to be the elementary grade level. The grade level of a project application made by a unified district shall be deemed to be the high school grade level for any project which includes grades 7 or 8 and any grades above, or the elementary school grade level if it contains any combination of grades below grade 9.

(16) Grade Level for the Purposes of Repayment Under Section 16335.2 The grade level for which an application is made, as defined in Subsection (15) preceding, and for which an apportionment is received, shall also be deemed to be the grade level operated by the district, within the meaning of Section 16335.

(17) "Expended" Funds Derived by Applicant From Taxes Levied under Section 39230. If a school district has been an applicant under Article 9 of Chapter 8 of Part 10 of the Education Code and has levied taxes pursuant to Section 39230 for the purpose of matching apportionments under said Article by the State Allocation Board, such funds shall be deemed to have been "expended" within the meaning of Section 39233, though not actually disbursed, so as not to require, pursuant to Subsection 39233(b), their application to reduce any outstanding Article 9 apportionments to the district where:

(i) Such funds are held or encumbered by the district for the purpose of discharging obligations under contracts entered or to be entered into

for projects for which the board has already made an apportionment under Article 9, or

(ii) Such funds have been earmarked by the district, by resolution or other action thereof, for use for a project eligible for an apportionment to the district under Article 9, whether by virtue of Section 16330.5 or any other section of said Article, taking into consideration the district's allowable new building construction area under Article 9 and the cost standards of the board pursuant thereto.

NOTE: Authority cited: Section 16316, Education Code. Reference: Sections 16310–16344, Education Code.

HISTORY

1. New Subsection (a)(17) filed 6–26–78 as an emergency; effective upon filing (Register 78, No. 26). For prior history, see Register 77, No. 18.
2. Certificate of Compliance filed 9–21–78 (Register 78, No. 38).

Article 2. Application Procedure

§ 1863.2. Form of Application.

To secure an apportionment a school district shall submit the following pursuant to Section 16323 and the authority conferred upon the Board by Section 16316:

(a) A resolution of the governing board of the applicant district authorizing the application.

(b) A statement of the estimated cost of the project certified by a licensed architect or structural engineer currently employed or retained by the district.

[The next page is 239.]

(c) Layout (preliminary) plans showing the entire construction project, including the specific location thereof, for which a district desires an apportionment.

(d) Environmental impact documents prepared in accordance with the requirements of Section 1863.30 et seq. of these regulations.

(e) Such other information as may be required by the Director of General Services.

NOTE: Authority cited: Section 16316, Education Code. Reference: Sections 16310–16344, Education Code.

HISTORY

1. Amendment of section and NOTE filed 4–29–77; effective thirtieth day thereafter (Register 77, No. 18). For prior history, see Register 75, No. 27.

§ 1863.3. Filing and Review of Applications.

Applications shall be filed with the Executive Officer who shall submit copies to the Director of General Services for report and recommendation to the Board after reviewing and making the investigations and determinations necessary pursuant to administering the provisions of the Act.

§ 1863.4. Changes in Application After Original Approval.

An applicant for an apportionment may, after approval of an application, request approval by the Board of changes within any project applied for. Such changes may be approved by the Board provided the changes are deemed necessary to properly achieve the essential purposes of the application as originally approved.

§ 1863.5. Priorities.

(a) The Board determines it is in the interests of the pupils of the state generally to give priority consideration to those districts which will not have their resources diminished by deductions from the State School Fund attributable to apportionments which they are unable to recoup because of the limiting effect of Article XIII.A of the Constitution.

(b) Notwithstanding any other provisions of these regulations, for the purpose of making apportionments or of the release of funds under apportionments already made where such latter funds have been encumbered by binding obligations on the part of the districts, applicant districts shall be divided into Groups A, B and C.

(1) Group A shall consist of those districts which the Executive Officer reasonably determines will be able to levy offset taxes over and above the 1% limitation provided by Section 1(a) of Article XIII.A of the Constitution to replace the full amount of deductions from the State School Fund apportionments attributable to the apportionments requested or to the release of apportioned funds.

(2) Group B consists of those districts which do not fall within Group A but which have legally binding obligations or commitments with respect to funds not yet released.

(3) Group C consists of districts which do not fall within either Groups A or B.

(c) Groups A and B shall have first and equal priority and shall be accommodated on a first come first served basis subject to the provision of Subsection (d) hereof.

(d) In any cases when the Board finds that the application of this regulation inequitable or would result in an undue hardship on the pupils of the districts affected as compared with pupils of other districts, irrespective of the group in which such other districts fall, the Board may make exceptions to this regulation.

HISTORY

1. Repealer and new section filed 6–26–78 as an emergency; effective upon filing (Register 78, No. 26).
2. Certificate of Compliance filed 9–21–78 (Register 78, No. 38).

Article 3. Eligible Facilities

§ 1863.6. Allowable School Building Area.

(a) Allowable building area shall be computed as follows:

(1) The amount of new building area for which an apportionment may be made for the purposes of replacing substandard school buildings at an attendance center, shall be based upon the number of units of average daily attendance which were housed in the substandard buildings being replaced and the building area limitations contained in Education Code Sections 16047, 16052, 16053, 16054 and 16055. For the purposes of this section the average daily attendance housed in substandard buildings shall be considered to be 0.97 of the enrollment assigned to such buildings at the time of the March 1971 or the October 1971 Report to the State Department of Education. In the event a school district has buildings at more than one attendance center to be replaced at a grade level, the enrollment date must be the same for all applications from the district for that grade level. If the substandard building was abandoned between February 1, 1971 and March 31, 1971, the enrollment shall be that assigned to such building on the most recent date prior to abandonment. In the event that less than all of the building area of the attendance center is to be replaced, the units of average daily attendance attributable to the substandard buildings shall be deemed to be the units of average daily attendance of the entire attendance center multiplied by a ratio computed by dividing the building area of the substandard buildings by the total building area of the attendance center.

(2) If the substandard building area to be replaced includes exceptional children, hereby defined as physically handicapped, educationally handicapped and mentally retarded minors, the enrollment reported for such children shall be excluded in computing the number of units of average daily attendance and allowable building area in subsection (a)(1) and in lieu thereof, the allowable building area for exceptional children shall be determined as follows:

(A) Divide the number of pupils of each type by the maximum class size established by law for special day classes for the type of pupils and increase the quotient to the next highest integer where a fractional amount is produced.

(B) Multiply the number computed in (A) by the maximum building area allowance shown below when the facility is planned for the following types of exceptional children:

Types of Pupils	Maximum Class Size		Area Allowance—Sq. Ft.		
	Ages 3–8	Ages 9–20	K–8	7–9	9–12
Deaf or Aphasic	6	8	1235	1335	1360
Blind or Severely Hard of Hearing	8	10	1290	1410	1440
Partially Seeing	10	12	1290	1410	1440
Educationally Handicapped	12	12	1080	1080	1080
	18	18	1373	1635	1680
Educable Mentally Retarded	See (3)	See (3)			
Trainable Mentally Retarded	12	12	1860	1860	1860
	12	16	2000	2000	2000
Orthopedic or Cerebral Palsied			See (4)	See (4)	See (4)

(C) When the chronological age span of educable mentally retarded minors is greater than four years, the maximum class size shall be 15 pupils.

(D) When facilities are to be constructed for orthopedically handicapped or cerebral palsy minors, additional building area allowances shall be made for elementary schools to provide adequate space for occu–

pational therapy, physical therapy, and related auxiliary services of up to 5,200 square feet if the facility is designed for one to three classes and up to 7,000 square feet for four to eight classes. Facilities constructed for junior and senior high schools shall be allowed additional building area of up to 600 square feet for auxiliary services.

(E) When facilities are to be provided for minors having speech defects or disorders, 200 square feet of additional building area per school is permitted.

(3) If the units of average daily attendance in grades kindergarten through 6 of an elementary district, computed on the same date and in the same manner specified by Subsection (a)(1), is less than 300, computation of units of average daily attendance in Subsection (a)(1) shall be made on the total enrollment of the district. The building area allowed such small schools, in accordance with Education Code 16047, shall be as follows:

(A) In an applicant district maintaining any combination of grades kindergarten through 6 with less than 300 units of average daily attendance in such grades:

ADA Units in Kindergarten and Grades 1–6	*Maximum Building Area (Sq. Ft.)*
6–25	1,600
26–50	3,800
51–75	5,700
76–100	7,200
101–133	8,415
134–166	10,200
167–199	12,000
200–232	13,360
233–285	15,675
286–299	16,500

(B) In an applicant district maintaining any combination of grades kindergarten through 8 with less than 300 units of average daily attendance in grades kindergarten through 6, there shall be allowed, in addition to the maximum total building area shown above, a maximum area of 75 square feet for each attendance unit in grades 7 and 8.

(4) If the substandard building area to be replaced includes high school pupils attending continuation classes, the enrollment reported for such pupils shall be excluded in computing units of average daily attendance and allowable building area in Subsection (a)(1) and in lieu thereof, the computed number of pupil units attending continuation classes shall be submitted therefor as herein provided.

(A) "Pupil Units attending continuation classes" is a figure computed as follows: First determine the average number of pupil hours of high school attendance in continuation classes per school day in the highest three months of the latest 12 months, then divide said average by six. In making this computation, pupil hours during the regular school day in excess of 15 per week shall be included. Pupil hours for evening or Saturday classes shall be excluded. Multiply the final figure obtained in the preceding calculation by a growth factor which is computed by dividing the "projected enrollment" by the applicable March or October graded enrollment for the most recent year. The figure obtained in the number of "Pupil Units attending continuation classes."

(B) In the event the building area to be replaced includes a continuation high school, building area shall be allowed for the continuation high school in accordance with the following schedule:

Pupil Units of Continuation High School	*Square Feet of Building Area*
21 to 40	4,800
41 to 60	4,800 + 120 for each pupil unit over 40
61 to 90	7,200 + 115 for each pupil unit over 60
91 to 120	10,650 + 105 for each pupil unit over 90
121 to 150	13,800 + 90 for each pupil unit over 120
Over 150	16,500 + 60 for each pupil unit over 150

For purposes of this section a continuation high school is defined as a continuation high school which is physically and operationally distinguishable from other schools. If the continuation high school shares space with another type of school, it can be considered to be a continuation high school within the meaning of this section only if the district can show conclusively that the continuation facility is in fact a separate institution with its own administration, teaching staff, and course of study, located in a clearly identifiable building area.

(5) Exceptions may be made where the Board finds that the application of this subsection (1863.6(a)) would be inequitable or would result in an undue hardship on the pupils of the district affected.

(b) For the purpose of computing the allowable area of new school building construction which shall not exceed the area of the building being replaced pursuant to Section 16326 of the Act, the existing and proposed building area shall be computed in accordance with the following:

(1) All measurements shall be made from exterior rough wall lines.

(2) Totally enclosed space shall be counted as full area. Among the various types of space to be included shall be areas such as:

(A) Basement rooms and basement boiler rooms.

(B) Heater rooms, including those above the normal floor level.

(C) Each floor of multi–story buildings.

(D) The area of completely enclosed stairs for each floor level served.

(3) Certain partially enclosed areas shall be counted as full area and shall include:

(A) Open, covered areas which provide shelter between buildings that are less than 20 feet apart.

(B) Mezzanines open on one or more sides which may easily and readily be used or converted to use as instructional space or passageways.

(C) Each floor of library stacks.

(4) Covered unenclosed space shall be counted as one–half of the actual area. Included in such space are:

(A) Open, covered passages, arcades, shelters, porches and planting areas.

(B) Open, covered areas which provide shelter between buildings that are 20 feet apart or more.

(C) Overhangs and sun control devices which are so designed and located that they function as, and in lieu of, covered walks or other sheltered areas.

(D) Mezzanines for storage purposes.

(5) Areas which shall not be counted include:

(A) Eaves and sun control devices except as specified above.

(B) Unsheltered platforms and steps.

(C) When isolated from building structures, the area of incinerators, pumphouses, transformer vaults, and service yards.

(D) That portion of the area below the first floor of a multi–story building used exclusively for employee parking, provided the Board finds that other means of parking are not economically feasible.

(E) Elevator shafts where constructed in order to comply with Chapter 7 of Division 5 of the Government Code (commencing with Section 4450), relating to facilities for handicapped persons.

NOTE: Authority cited: Section 16316, Education Code. Reference: Section 16326, Education Code.

HISTORY

1. Amendment of subsections (a)(1), (a)(3) and (b) filed 4–29–77; effective thirtieth day thereafter (Register 77, No. 18). For prior history, see Register 74, No. 51.

§ 1863.7. Building Cost Standards.

(a) For the purposes of establishing current building cost standards for new construction in accordance with Section 16323 of the Act, a study and report thereon shall be made to the Board by the Director of General Services.

(b) Pursuant to the report submitted under Subsection (a) of this regulation, the Board shall establish allowable school building cost standards, which cost standards shall be effective until next revised.

(c) After the initial adoption of allowable building cost standards by the Board, a continuing study of such costs shall be conducted by the Director of General Services.

(d) No application or bid shall be approved and no apportionment shall be made for any construction which exceeds the allowable costs established as provided herein, except as provided by Section 16332. In the event, however, that it is conclusively shown from any studies by the Director of General Services that actual building costs in an area or portion of an area differ substantially from the allowable costs established for the area, the Board may at any time revise the allowable building cost standards for the area.

(e) The Director of General Services shall determine whether the cost of building construction included in any application or bid is within the allowable building cost. The District shall provide all information the Director of General Services may require for this purpose.

NOTE: Authority cited: Section 16316, Education Code. Reference: Section 16323, Education Code.

HISTORY

1. Amendment of subsections (a) and (d) and new NOTE filed 4–29–77; effective thirtieth day thereafter (Register 77, No. 18).

§ 1863.8. Replacement.

(a) An existing substandard school facility may be replaced pursuant to Section 16319 of the Act if, upon investigation, the Board finds that the structural stability of the facility constitutes a potential threat to the safety of those using the facility, and it would not be economical or good practice to remedy such conditions by repairing or reconstructing the facility.

(b) All requests for replacement of existing facilities shall be accompanied by:

(1) Full detail prepared by competent authority regarding the existing condition and deficiencies of such facilities, together with complete information regarding any other circumstances involved that would justify replacement;

(2) A statement of the estimated cost and the practicability of remedying the deficiencies of each facility as compared with replacement costs:

(3) A certified resolution of the governing board of the district, to which is attached a full description of the facility to be replaced, together with a title report and plat in the event real property is involved, and containing:

(A) A statement that the facility described in the attachment is the facility which is to be replaced.

(B) A plan, satisfactory to the Director of General Services, for disposition of the facility to be replaced, specifying the proposed manner of disposition and the date by which disposition is to be accomplished, provided however that such disposition shall in any case be subject to Section 16318.

(c) Facilities not complying with the Field Act demolished by the district subsequent to June 4, 1971, the effective date of Article 9, but prior to the effective date of an application, may be replaced by the Board if the Board finds that it would not have been economical or good practice to have rehabilitated such facilities to comply with such Act. Any application for such replacement shall be accompanied by:

(1) Full detail prepared by competent authority regarding the structural deficiencies of such facilities.

(2) A statement (1) of the estimated cost of having rehabilitated such facilities versus replacement of the same, and (2) of the practicability of having rehabilitated such facilities in the light of such replacement cost or other factors.

(3) A certified resolution of the governing board of the district, to which is attached a full description of the facilities demolished.

(4) Full detail of the method used for demolition, such as sold to the highest bidder, demolished by negotiated contract, etc., including how the demolition value was established and an accounting of any funds received therefrom.

(d) In cases of partial replacement of a school plant, where structurally adequate buildings are rendered nonfunctional as a result of the replacement, such reconstruction shall be permitted to existing adequate facilities as is necessary to make such existing facilities function in the same manner as they were functioning prior to removal of the structurally inadequate facilities.

NOTE: Authority cited: Section 16316 Education Code. Reference: Sections 16318 and 16319, Education Code.

HISTORY

1. Amendment of subsections (a) and (b)(3)(B) filed 4–29–77; effective thirtieth day thereafter (Register 77, No. 18). For prior history, see Register 74, No. 3.

§ 1863.9. Rehabilitation Considered As Replacement.

Where the Board has approved an application which includes rehabilitation of school building facilities, and the Board thereafter makes a finding that by reason of bids actually received, or for other good cause, it would not be economical or good practice to rehabilitate such facilities or portions thereof, such application and approval shall be considered, retroactive to the original dates thereof, to be an application for, and an approval of, the replacement rather than the rehabilitation of such facilities or portions thereof.

§ 1863.10. Site Development Standards.

(a) The Board shall establish standards for allowable utility services, off–site development, service site development, and general site development to insure that such site development will be within the limits of that which it deems necessary for the adequate operation of the school plant in accordance with good engineering practices. The Director of General Services shall make such studies and reports as may be required to assist the Board in establishing these standards.

(b) For the purposes of this regulation, site development shall be classified as follows:

(1) Utility Services may include but are not limited to facilities required to bring such water, sewer, electricity, telephone, and fuel supply services to such suitable point on the site as may be necessary.

(2) Off–site Development may include but is not limited to such street improvements as are in line with the approved standards of the Board and as are determined by the Director of General Services to be necessary. In the event a city, county, or city and county requests a higher standard of improvement, or improvements in excess of that determined by the Director of General Services to be necessary, the resultant excess costs shall be borne by said city, county, or city and county with or without recourse to the provisions of Section 2117 of the Streets and Highways Code.

(3) Service Site Development may include but is not limited to site clearance, rough grading, and drainage which may b required to make a site usable in accordance with standards established by the Board.

(4) General Site Development in connection with new construction, may include but is not limited to any other development of a site, including such item as grading (except rough grading), walks, curbs, roadways, parking areas, fencing, flagpoles, incinerators, hard–surfaced and turfed play areas and playground equipment.

§ 1863.11. Furniture and Equipment.

Apportionments may include funds for such additional furniture and equipment as determined by the Director of General Services to make the rehabilitated or replaced facilities properly function. Costs shall not exceed current costs of similar items which the district purchases for other schools.

§ 1863.12. Site Acquisition.

(a) The acquisition of new school sites or additions to existing sites shall be eligible under an application only where such acquisition is necessary in connection with the construction of new school buildings which replace substandard structures.

(b) No apportionment shall be made for a site until the school district has furnished the Board at its own expense with two independent appraisals of the market value of the site made by competent appraisers. However, the costs of these appraisals, as well as other incidental site costs, may

be included within the application, and shall be subject to the approval of the Board.

§ 1863.12.5. Temporary Housing.

NOTE: Authority cited: Section 19700.57, Education Code. Additional authority cited: Section 15503, Government Code.

HISTORY

1. New section filed 6–19–74 as an emergency; effective upon filing (Register 74, No. 25).
2. Certificate of Compliance filed 9–18–74 (Register 74, No. 38).
3. Repealer filed 12–30–76; effective thirtieth day thereafter (Register 77, No. 1).

Article 4. District Financial Requirements

§ 1863.13. District Financial Requirements.

(a) In addition to any other requirements of the Act, these regulations, and the apportionment resolution, a district shall contribute the following funds as soon as they become available to the district toward the cost of the project or, if the project be completed, toward the reduction of any apportionments previously made; the contributions to be proportionate to the District's and State's participation in the project.

(1) The net proceeds from the sale, or the fair value as determined by the Director of General Services, whichever is greater, or the net revenue derived from the lease or rental of the following:

(A) Facilities required by the Board to be disposed of.

(B) Improvements, materials, crops and natural resources on a site or sites purchased under an application.

(2) Interest earned on any funds available for cost of a project including interest reasonably attributable to such funds where the same are commingled with other funds earning interest.

(b) The Director of General Services shall determine, on behalf of the Board, the amount of funds a district is required to contribute under subsections (1) and (2) above. Such determination shall be binding upon the district; however, after receipt of written notice of such determination, the district may file an appeal with the Board within six months thereafter, in which event the decision of the Board may affirm or modify the determination of the Director of General Services.

Article 5. Project Budget

§ 1863.14. Contents of Project Budget.

(a) The project budget prescribed by the Board shall be set up under major categories as follows: Sites; Plans; Construction; Tests; Inspection; Furniture and Equipment; and Contingencies. The initial approval of an application shall be based upon the estimated costs as included in these major categories. However, final approved costs within these major categories shall have the following limitations:

(1) Sites:

(A) Actual costs for the acquisition of a site in excess of the estimated cost as originally approved shall be allowed only after specific approval of the Board.

(B) For the purposes of this subsection (1863.14(a)(1)(B)), the term "district" shall include any person or entity with whom the district contracts under Section 7261.5, Government Code, acting on behalf of the district. Relocation costs to landowners or persons displaced pursuant to Sections 7260 et seq. of Chapter 16, Division 7, Title 1 of the Government Code, hereinafter referred to as the "Relocation Assistance Law," in conjunction with an acquisition of a site for which an apportionment is made may be deemed to be a part of the cost of acquisition subject to the following conditions:

1. The school district shall certify that it has adopted regulations pursuant to the Relocation Assistance Law, as required by Section 7267.8, Government Code, or has contracted with a party or entity specified in Section 7261.5, Government Code, for the performance of services under said law.

2. A request for payment under the Relocation Assistance Law shall be accompanied by:

a. A citation to the pertinent portions of the law and regulations to the extent the latter are applicable.

b. A copy of any such pertinent portion of the regulations, and

c. Any factual justification that may be applicable in connection with the citation referred to in "a.," including, where applicable, justification by the district subject to the written approval of the Executive Officer, of the reasonableness of any cost of expense applied for by the district under Sections 7262 and 7263, Government Code, that is required to be "reasonable" by said sections.

3. That any offer by the district for said site as specified in Sections 7267.2 or 7267.7, Government Code, shall not exceed the highest qualified appraisal of such site made for the purposes of obtaining an apportionment from the Board for the acquisition thereof.

4. That any decision by the district under Section 7266, Government Code, (pertaining to the reviewing of the application of an aggrieved person) shall not be in contravention of this subsection 1863.14(a)(1)(B).

5. That any cost in conjunction with Section 7264.5, Government Code, (relating to the actual provision of housing) shall be justified in writing by the district and approved in writing by the Executive Officer.

6. Nothing in this section shall be deemed to impose upon a school district a fiscal burden in connection with an obligation to a landowner or displaced person that did not exist prior to the adoption of this section.

(C) Relocation assistance in connection with the acquisition of real property shall be administered by the Board in accordance with State Relocation Guidelines adopted by the California Commission of Housing and Community Development.

(D) Before State funds are released for any portion of the construction costs, evidence shall be presented, satisfactory to the Director of General Services, that good title to the site for said project is vested in the school district, or will be vested in the school district, when the purchase of the site is completed. A use permit deemed by the Director of General Services to be satisfactory, may be considered to be good title for the purpose of this subsection.

(E) No site financed in whole or part under the act shall be required or contracted for without the written approval of the Director of General Services, provided that any such contract may be entered into subject to such written approval. Prior to obtaining such approval copies of any proposed contracts and escrow instructions shall be submitted to the Director.

(2) Plans:

(A) Fees for architectural and engineering services, including architectural supervision, shall not exceed the customary fees for such services as approved by the Director of General Services.

(B) Any cost for or incidental to redesigning or replanning, incurred as a result of bids in excess of allowable construction cost standards, shall not be eligible for reimbursement under the Act.

(3) Construction: The amount for construction shall be limited to the lowest acceptable bid as approved in writing, by the Director of General Services. No contract for construction financed in whole or in part under this act shall be awarded prior to such approval.

(4) Tests: The amount for tests and related inspection shall be limited to the actual costs of tests which are required by Title 21 of the California Administrative Code or other applicable provisions of law, or which are in accordance with good or accepted practice as approved by the Director of General Services.

(5) Inspection: The amount for inspection shall be limited to the actual costs for the legal duration of the construction contract which shall be deemed to terminate on the date of completion of the work as specified in the contract or as it is changed through such valid extensions as may be approved by the Director of General Services. Additional inspection costs beyond such date shall be allowed only upon a time-worked basis, and only to the extent they are in excess of any damages recoverable by the district from the contractor for the period of the inspection. It shall be

presumed that any such inspection costs are offset by damages recoverable by the district from the contractor by way of liquidated damages or compensatory damages, unless the district submits a written opinion from the county counsel holding otherwise, and stating his reasons for such conclusion.

(6) Furniture and Equipment: The amount for furniture and equipment shall be that determined pursuant to Section 1863.11 hereof.

(7) Contingencies:

(A) An amount may be included for contingencies which shall not exceed such maximums as the Board or the Director of General Services may prescribe for any class of application or value of facilities in a project budget.

(B) Contingency funds may be used only after specific written approval by the Director of General Services for items of construction or other approved project costs where the cost increase or the item required is necessary for the completion of a facility which has been approved by the Board.

NOTE: Authority cited: Section 16316, Education Code. Reference: Section 16316, Education Code.

HISTORY

1. Renumbering of subsections (a)(1)(B) and (a)(1)(C) to (a)(1)(D) and (a)(1)(E) and new subsections (a)(1)(B) and (a)(1)(C) filed 12–19–73 as an emergency; effective upon filing (Register 73, No. 51).
2. Certificate of Compliance filed 3–21–74 (Register 74, o. 12).
3. Amendment of subsection (a)(1)(C) filed 3–21–74 as an emergency; effective upon filing. Certificate of Compliance included (Register 74, No. 12).
4. Amendment of subsection (a)(1)(C) filed 4–29–77; effective thirtieth day thereafter (Register 77, No. 18). 9–17–71 as an emergency; effective upon filing. Certificate of Compliance included (Register 71, No. 38).

§ 1863.15. Revision of a Project Budget.

(a) The Director of General Services may revise any item within the construction project budget upward or downward, and pursuant to his determination under Section 1863.13 (b) may increase the contribution of the district with a corresponding reduction in State aid and/or apportionment, provided that nor revision authorized under this subsection results in an increase in the total amount of the project budget prescribed by the Board or contemplates an expenditure not otherwise permitted by the Act of these regulations.

(b) The Director of General Services may reduce any apportionment or State aid as may be necessary to reflect any revision or increase in contribution made by him pursuant to (a) above.

(c) Notwithstanding, (a) or (b) the Director of General Services shall readjust any budget as necessary to comply with any decision of the Board after appeal taken pursuant to Section 1863.13, supra.

(d) No change order shall be approved or become a basis for revising a construction contract because of additional work performed or to be performed after the notice of completion has been filed or the project has been accepted by the governing body of the school district, whichever first occurs.

HISTORY

1. Amendment of subsections (a) and (b) filed 9–17–71 as an emergency; effective upon filing. Certificate of Compliance included (Register 71, No. 38).

§ 1863.16. Competitive Bids.

In instances where a school district is not required by the provisions of the Education Code to make purchases or have other work performed by contracts which have been let pursuant to competitive bids, the Director of General Services nevertheless may require such competitive bids whenever he deems it to be in the best interests of the State.

Article 6. Apportionments

§ 1863.17. Conditional Apportionment.

(a) In addition to complying with any other requirements of these regulations or the Act, the Board at the time of making a conditional apportionment, shall:

(1) Establish the basic computed State matching ratio of assistance under Section 16330 of the Act, and specify the amount of local matching funds to be deposited by the school district as a condition of an apportionment.

(2) Approve a total estimated cost and budget for the project.

(3) Prescribe the purposes for which the apportionment may be expended.

(4) Fix the rate of interest to be paid by the district on the State funds apportioned to it in accordance with the provisions of Section 16334 of the Act.

NOTE: Authority cited: Section 16316, Education Code. Reference: Section 16334, Education Code.

HISTORY

1. Amendment of subsections (a)(1) and (a)(4) filed 4–29–77; effective thirtieth day thereafter (Register 77, No. 18).

§ 1863.18. Modification of Apportionment.

Notwithstanding anything to the contrary in these regulations, the Board shall have power to modify any apportionment or resolution of apportionment, either conditional or final, where the Board determines that good cause exists therefor.

§ 1863.19. Unencumbered Balance in the State School Building Fund of a School District.

Except as otherwise provided by the Act the share proportionate to the State's contribution toward a project under the Act, of any money in the State School Building Fund of a school district which remains an unencumbered balance in excess of the amount required to liquidate all approved costs or expenditures necessary to complete a project shall be returned by the district to the State within sixty (60) days after notice of completion of the construction project has been filed or the project has been accepted or occupied by the governing body of the school district, whichever first occurs.

Article 7. General

§ 1863.20. Performance and Payment Bond.

In connection with any construction of facilities by a district authorized under this Act, the district shall require of the contractor a payment bond as required by Chapter 7 (commencing at Section 3247) Title 15, Part 4, Div. 3, California Civil Code, and a faithful performance bond in not less than a similar amount.

§ 1863.21. Approval of Final Plans and Specifications.

No district shall advertise for construction bids or award a contract with respect to a project for which an apportionment has been made until the Director of General Services has received the final plans and specifications and has advised the district that such final plans and specifications are consistent with the application as approved by the Board.

§ 1863.22. Title to Real Property.

The district shall furnish satisfactory evidence of good title to all real property acquired, developed, or improved through the expenditure of an apportionment.

§ 1863.23. Disposition of Replaced Facilities.

(a) Property, real or personal, replaced through an apportionment shall be disposed of pursuant to these regulations in a manner approved by the Executive Officer and the net proceeds therefrom contributed as a reduction of any apportionment pursuant to Education Code Section 16318.

The "net proceeds" shall include only that portion of the proceeds attributable to the buildings replaced where the sale or lease pursuant to (b)(1) or (b)(5) of this regulation involves land not replaced through an apportionment.

Whenever the State's matching ratio has been increased by virtue of any apportionments pursuant to Education Code Sections 16336, 16339, 16339.6 or 16339.7 (supplemental loan), the entire "net proceeds" as determined above shall be applied as a reduction of the apportionments.

(b) For the purposes of Education Code Section 16318, "disposed of" is defined as one of the following:

(1) Sale to others of replaced real property and buildings thereon at market value.

(2) Demolition of the buildings, where no real property has been replaced.

(3) Sale to others at market value of the buildings and physical removal from the site, where no real property has been replaced.

(4) Conversion of the use of the building to other than a "school building" as set forth in Section 39214 or conversion to a recreational or community use for which the building is not a "school building" as defined by Section 39141. Such conversion may be approved by the Executive Officer only upon contribution by the district of a sum to be applied as a reduction of the apportionment of not less than $1.00 for each square foot of building area so converted plus the fair market value of any replaced real property to be retained with the building. Any building so converted shall have posted in a conspicuous place on such building a public notice stating that such building does not meet the structural standards imposed by law for earthquake safety for a school building.

(5) Lease of replaced land and/or improvements at fair market value. Before a lease can be approved, the district must submit and the Executive Officer approve a plan of disposition to be implemented at the expiration or termination of the lease. The plan submitted by the district must be in accordance with (1), (2), (3), or (4) above.

(c) Any school district which has received an apportionment for the replacement of a school building or real property based upon a plan of disposition of the replaced property and has neither complied with such plan nor submitted an alternate plan acceptable to the Executive Officer within 2 years of such apportionment or by March 1, 1978, whichever occurs later, shall be deemed to have elected to dispose of such replaced property pursuant to Regulation 1863.23(b)(4) and shall be required to contribute as a reduction of its apportionment an amount equal to $1.00 for each square foot building area plus the fair market value of any replaced real property to be retained with the building.

NOTE: Authority cited: Section 16316, Education Code. Reference: Section 16318 and 16341, Education Code.

HISTORY

1. New subsection (c) filed 4–26–77; effective thirtieth day thereafter (Register 77, No. 18). For prior history, see Register 76, No. 18.
2. Amendment of subsections (a) and (b) and NOTE filed 4–29–77; effective thirtieth day thereafter (Register 77, No. 18).
3. Amendment filed 11–25–77 as an emergency; effective upon filing (Register 77, No. 48).
4. Certificate of Compliance filed 3–1–78 (Register 78, No. 9).

§ 1863.24. Director of General Services.

The Director of General Services shall perform all acts necessary to carry out the provisions of the Act except such functions as are reserved to the Board and to other agencies by law or by these regulations and shall provide such staff assistance to the Board as may be necessary. This shall include adoption of such operating procedures as he deems essential to carrying out the provisions of the Act that are not in conflict with said Act or these Regulations.

§ 1863.25. Compliance with Laws.

All laws, ordinances, and regulations otherwise applicable to any project undertaken pursuant to an apportionment made under the Act shall remain applicable to said project unless otherwise provided by the Act or these regulations.

§ 1863.26. *Limitation of* State Responsibility.

In making an apportionment, neither the State nor any department or agency thereof, shall be required to assume any responsibility not otherwise imposed upon it by law.

§ 1863.27. Environmental Impact Requirements.

NOTE: Authority cited: Authority cited: Section 19700.57, Education Code.

HISTORY

1. New section filed 3–19–73 as an emergency; effective upon filing (Register 73, No. 12).
2. Certificate of Compliance filed 6–22–73 (Register 73, No. 25).
3. Repealer filed 3–21–75 as an emergency; designated effective 4–1–75 (Register 75, No. 12).
4. Certificate of Compliance filed 7–3–75 (Register 75, No. 27).

§ 1863.28. Unforeseen Emergency Conditions Justifying an Emergency Meeting of the Board with Less Than One Week's Notice.

For this purpose, an unforeseen emergency condition exists where

(1) A statute has been enacted which would allow the State Allocation Board to authorize continued use of school facilities until completion of replacement facilities or until June 30, 1978, whichever occurs first, but did not become effective in time for a district to request consideration as a regular agenda item of the Board, and where

(2) existing authorization terminates June 30, 1977, which is prior to the next regular meeting of the Board.

NOTE: Authority cited: Section 16316, Education Code. Reference: Section 11125, Government Code.

HISTORY

1. New section filed 6–24–77 as an emergency; effective upon filing (Register 77, No. 26).

Article 8. Environmental Impact Requirements

§ 1863.30. CEQA Requirements.

These requirements are set forth in the following sections of Title 14, of the California Administrative Code:

SECTION NUMBERS

15001–15007	15231
15020–15021	15233
15041–15045	15261–15262
15050	15269
15052	15274
15060–15065	15300
15070–15074	15300.2
15080–15096	15300.4
15100–15112	15302
15120–15132	15314
15140–15153	15350–15368
15162–15170	15370–15376
15201–15205	15378–15385
15207–15227	

NOTE: Authority cited: Sections 21001, 21082, 21083 and 21087, Public Resources Code. Reference: Sections 21082, 21083 and 21087, Public Resources Code.

HISTORY

1. New Article 8 (Sections 1863.30–1863.48) filed 3–21–75 as an emergency; designated effective 4–1–75 (Register 75, No. 12).
2. Certificate of Compliance filed 7–3–75, except as to Section 1863.32 (Register 75, No. 27).
3. Repealer of former Article 8 (Sections 1863.30–1863.48) and new Article 8 (Sections 1863.30) filed 11–14–86; effective thirtieth day thereafter (Register 86, No. 46).

§ 1863.31. Definitions.

HISTORY

1. Repealer filed 11–14–86; effective thirtieth day thereafter (Register 86, No. 46).

§ 1863.32. CEQA Officer.

NOTE: Reference: Section 1500 et seq., Resources Code.

HISTORY

1. Amendment filed 7–3–75 as an emergency; effective upon filing. Certificate of Compliance included (Register 75, No. 27).
2. Repealer filed 11–14–86; effective thirtieth day thereafter (Register 86, No. 46).

§ 1863.33. Applicability of These Rules.

HISTORY

1. Repealer filed 11–14–86; effective thirtieth day thereafter (Register 86, No. 46).

§ 1863.34. Applicability of CEQA and Guidelines.

HISTORY

1. Repealer filed 11-14-86; effective thirtieth day thereafter (Register 86, No. 46).

§ 1863.35. Required Filing by a District.

HISTORY

1. Repealer filed 11-14-86; effective thirtieth day thereafter (Register 86, No. 46).

§ 1863.36. Categorical Exemptions.

HISTORY

1. Repealer filed 11-14-86; effective thirtieth day thereafter (Register 86, No. 46).

§ 1863.37. Notice of Exemption-Rejection by Executive Officer.

HISTORY

1. Repealer filed 11-14-86; effective thirtieth day thereafter (Register 86, No. 46).

§ 1863.38. Non-Exempt Projects—Initial Study.

HISTORY

1. Repealer filed 11-14-86; effective thirtieth day thereafter (Register 86, No. 46).

§ 1863.39. Negative Declaration—Requirements and Attachments.

HISTORY

1. Repealer filed 11-14-86; effective thirtieth day thereafter (Register 86, No. 46).

§ 1863.40. Negative Declaration—Rejection by Executive Officer If Not in Conformity with Law.

HISTORY

1. Repealer filed 11-14-86; effective thirtieth day thereafter (Register 86, No. 46).

§ 1863.41. Negative Declaration—Non-Rejection If in Accordance with Law.

HISTORY

1. Repealer filed 11-14-86; effective thirtieth day thereafter (Register 86, No. 46).

§ 1863.42. EIR—General Requirements.

HISTORY

1. Repealer filed 11-14-86; effective thirtieth day thereafter (Register 86, No. 46).

§ 1863.43. EIR Attachments.

HISTORY

1. Repealer filed 11-14-86; effective thirtieth day thereafter (Register 86, No. 46).

§ 1863.44. EIR for More Than One Project.

HISTORY

1. Repealer filed 11-14-86; effective thirtieth day thereafter (Register 86, No. 46).

§ 1863.45. EIR—Rejection by Executive Officer for Non-Conformity with Law.

HISTORY

1. Repealer filed 11-14-86; effective thirtieth day thereafter (Register 86, No. 46).

§ 1863.46. EIR Evaluation by the Board.

HISTORY

1. Repealer filed 11-14-86; effective thirtieth day thereafter (Register 86, No. 46).

§ 1863.47. Feasibility Studies.

HISTORY

1. Repealer filed 11-14-86; effective thirtieth day thereafter (Register 86, No. 46).

§ 1863.48. Exceptions to Current Requirements.

HISTORY

1. Repealer filed 11-14-86; effective thirtieth day thereafter (Register 86, No. 46).

Subgroup 10. School Sites: Nonuse Payments

Article 1. Definitions

§ 1864.1. Definitions.

(a) In connection with the administration of the provisions of Sections 39015 to 39018, inclusive, of Article 1, Chapter 1, Part 23, Division 3, Title 2, Education Code and for the purposes of these regulations, the terms set forth below shall have the following meanings:

(1) The Act. Sections 39015 through 39018, above.

(2) This Regulation. Shall be deemed to refer to Sections 39015 through 39018 thereof.

(3) Subject Sections. Shall be deemed to refer to Sections 39015 through 39018 of the Education Code.

(4) "Use" Within Five or Seven Year Period Specified by Section 39015.

(A) Use Prior to Effective Date of This Act Within 5 or 7 Year Period from Date of Acquisition. A district shall not be deemed to have used a site prior to the effective date of the act (January 1, 1974), within the 5 or 7 year period from the date of acquisition specified by Section 39015, unless it has within such 5 or 7 year period either:

1. entered into a lease in accordance with law which at any time in the future will result in improvements of a substantial nature on the site, or

2. made any other use thereof which either:

a. included the use of substantial improvements on the site at the time of acquisition, or

b. resulted at any time in such improvements on the site. For the purposes of this paragraph:

(i) bleachers or backstops regularly used for Little League play shall be deemed to be a substantial improvement to the site, and

(ii) the growing of agricultural or other plants shall not be deemed to be a substantial improvement to the site unless done as part of a regular school program for the benefit of the pupils of the district.

(B) Use Subsequent to the Effective Date of the Act. A site shall not be deemed to be used within the meaning of the five or seven year period of the date of acquisition specified by Section 39015 subsequent to the effective date of the act unless the use made thereof is for the specific purpose for which acquired, or for a purpose of similar dignity, as for example:

1. used to house students for all Department of Education programs authorized by the Legislature and operated by public school districts for which the district is receiving ADA apportionments. This would include Adult Education if ADA apportionments are being received,

2. used to house Special Education students,

3. used for District Administration including such support facilities as warehousing and maintenance facilities,

4. used for preschool or child care centers when operated by or under contract with public school districts or county superintendents of schools.

(5) "Purpose for Which It Was Intended" in Section 39015. The phrase "Purpose for which it was intended" in Section 39015 shall be deemed to mean the specific purpose for which the site was acquired or a purpose of similar dignity, for example:

(A) the substitution of a school of one grade level for a school of a different grade level, or

(B) used for the following reasons:

1. to house students for all Department of Education programs authorized by the Legislature and operated by public school districts for which

the district is receiving ADA apportionments. This would include Adult Education if ADA apportionments are being received,

2. to house Special Education students,

3. for District Administration including such support facilities as warehousing and maintenance facilities,

4. for preschool or child care centers when operated by or under contract with public school districts or county superintendents of schools.

(6) "Will Utilize the Property . . . Within a Reasonable Period of Time" in Section 39015. The term "utilize" in the heading of this subparagraph shall refer to the same type of use as specified in (4) B above. A "reasonable period of time" shall be deemed to be a fixed period of time specified by the Board or a period of time dependent upon one or more contingent or indefinite occurrences, with or without a cutoff date, which the Board deems reasonable under the circumstances of the case. Generally, a reasonable period of time shall not exceed three years, unless the Board determines a longer period is warranted by the facts.

(7) Evidence. "Evidence" shall include information or documentation bearing upon the matter sought to be shown.

(8) Future Use. "Future Use" shall be deemed to mean "use," as defined in (4)B above within a "reasonable period of time," as defined in (6) above.

NOTE: Authority cited: Sections 39015–39018, Education Code. Reference: Section 39015, Education Code.

HISTORY

1. Amendment of section and NOTE filed 4–29–77; effective thirtieth day thereafter (Register 77, No. 18). For prior history, see Register 75, No. 31.
2. Amendment filed 11–7–88; operative 12–7–88 (Register 88, No. 46).

Article 2. Procedures

§ 1864.2. Cooperation by School Districts.

Every school district shall furnish the Executive Officer within a reasonable period of time specified by him and on forms prescribed thereby, with such attachments as may be desirable such information as may be requested by him in order for the Executive Officer or the Board to perform their functions under this regulation.

§ 1864.3. Evidence of Use—Determination by Executive Officer If Favorable; Otherwise by Board.

The Executive Officer may determine that the site has been so used if he determines the evidence warrants the same, for the following:

(A) Where the district furnishes evidence of use within the meaning of Section 1864.1(4) A or B above,

(B) Where the district furnishes evidence that a school site has been utilized for one–half or more of the number of days in a year by a school district or by any other governmental entity pursuant to agreement with the school district for school or community playground, playing field, or other outdoor recreational purposes.

Otherwise, he shall submit the question of use or non–use to the Board for its determination.

NOTE: Authority cited: Section 39015, Education Code. Reference: Section 39015, Education Code.

HISTORY

1. Amendment filed 12–21–84; effective thirtieth day thereafter (Register 84, No. 51).

§ 1864.4. No Evidence of Past Use.

Where a district fails to furnish to the Executive Officer evidence of past use within the meaning of Section 1864.1(4)A above, within a reasonable time prescribed by such officer, the Executive Officer shall make a determination of non–use, which shall constitute the Board's determination referred to in 39017.

NOTE: Authority cited: Sections 39015–39018, Education Code. Reference: Section 39017, Education Code.

HISTORY

1. Amendment of section and new NOTE filed 4–29–77; effective thirtieth day thereafter (Register 77, No. 18).

§ 1864.5. Non–Use Determination by the Board.

Where the Executive Officer, pursuant to Section 1864.3, has not made a favorable determination that the site has been used, the Board shall consider the evidence submitted and shall make such determination of use or non–use.

§ 1864.6. Board's Determination of Future Use.

When any finding of non–use has been made pursuant to Section 1864.4 or 1864.5, the district shall be given a reasonable time, as determined by the Executive Officer, to furnish evidence of future use to the Board for its determination as to whether the same will occur, together with the recommendation by the Executive Officer as to the Board's action with respect thereto.

§ 1864.7. Determination That Reasonable Time Has Elapsed Prior to the Expiration of Maximum Period Specified.

When the Board has made a determination that a district will use the site within a reasonable period of time, it may subsequently determine that such reasonable period has elapsed, though less than the time specified, where the Board receives information that satisfies it, that such site will not be used during such period for the purpose for which it was intended within the meaning of Section 1864.1(a)(5). Any affected district shall, if it desires, be given an opportunity to be heard by the Board prior to such determination. Any such determination shall be deemed a determination of non–use at the time it is made for the purposes of Section 39017. For the purpose of this paragraph, the term "period" as used herein may include either a fixed period or an open–ended period.

NOTE: Authority cited: Sections 39015–39018, Education Code. Reference: Section 39015, Education Code.

HISTORY

1. Amendment of section and new NOTE filed 4–29–77; effective thirtieth day thereafter (Register 77, No. 18).

§ 1864.8. Purchase Price Modification Factor.

Any school district subject to non–use payments pursuant to Section 39015, Education Code may furnish the Board with a copy of a current appraisal of the fair market value of the site under consideration made either by a qualified independent appraiser or the county assessor. The Executive Officer may use such appraised value as the modified purchase price for determination of non–use payments pursuant to Section 39015.

NOTE: Authority cited: Sections 39015–39018, Education Code. Reference: Section 39015, Education Code.

HISTORY

1. Repealer and new section filed 3–21–75 as an emergency; effective upon filing (Register 75, No. 12).
2. Certificate of Compliance filed 7–3–75 (Register 75, No. 27).
3. Amendment of section and NOTE filed 4–29–77; effective thirtieth day thereafter (Register 77, No. 18).

§ 1864.9. No Certification Where Acquisition for Nominal Consideration.

Where a district has acquired the property for a nominal consideration, no certification shall be made by the Executive Officer to the State Controller with respect to each fiscal year prescribed by Section 39016. A consideration shall be deemed to be nominal with respect to any fiscal year during which a certification would otherwise be made by the Executive Officer, where it appears likely to him that it would result in a deduction by the Controller during the next succeeding fiscal year of less than $5 for any of the installments specified in Section 39016.

NOTE: Authority cited: Sections 39015–39018, Education Code. Reference: Section 39016, Education Code.

HISTORY

1. Amendment of section and new NOTE filed 4–29–77; effective thirtieth day thereafter (Register 77, No. 18).

§ 1864.10. Lease–Purchase Same As Sale.

When a district has entered into a lease–purchase agreement with another public agency which will result in the transfer of title for the site to such public agency upon completion of the purchase, such lease–purchase shall be considered to be a sale within the meaning of Section 39017, Education Code.

NOTE: Authority cited: Sections 39015–39018, Education Code. Reference: Section 39017, Education Code.

HISTORY

1. New section filed 4–24–75 as an emergency; effective upon filing (Register 75, No. 17).
2. Certificate of Compliance filed 8–1–75 (Register 75, No. 31).
3. Amendment of section and NOTE filed 4–29–77; effective thirtieth day thereafter (Register 77, No. 18).

Subgroup 11. Regulations Relating to the Leroy F. Greene State School Building Lease–Purchase Law of 1976

(Chapter 22, Part 10, Division 1, Education Code)

Article 1. Definitions

§ 1865.1. Definitions.

For the purpose of these regulations, the terms set forth below shall have the following meanings, subject to the provisions of the act:

(a) The Act. Chapter 22, Part 10, of the Education Code.

(b) Board. The State Allocation Board.

(c) Executive Officer. The executive officer of the State Allocation Board.

(d) Application. A request pursuant to the act to lease a project. Such request shall be on forms prescribed by the board, together with such other information as may be required by the executive officer.

(e) District or Applicant School District. Any school district applying for a project or the county superintendent of schools qualifying as an applicant pursuant to Section 2553 of the Education Code.

(f) District Representative. One or more individual members of the district's staff appointed by it as "district representative" to file an application with the board on behalf of the district and to act as liaison between the board and the district.

(g) Agent of the Board. The applicant school district appointed by the board as its agent to perform specifically authorized acts necessary to construct and equip the project.

(h) Facility. All or a portion of any real property, site improvement, utilities, buildings, or furniture and equipment contained in a project.

(i) Lease Agreement with Option to Purchase. An agreement between an applicant school district and the State to lease with an option to purchase a project, as defined in the act, from the State.

(j) Lease–Purchase Project. A project for which the district has or intends to enter into one or more lease agreements with option to purchase on a given site.

(k) Reconstruction. Reconstruction for the purpose of Section 1721 shall be considered the substantial architectural alteration or modification of a building in order to bring it to modern educational standards.

(l) Construction. Construction for purposes of Education Code Section 17702.1 shall include the correction of structural deficiencies in a school building previously constructed pursuant to Article 3 of Chapter 2 of Part 23 of Division 3 of Title 2 of the Education Code when it is determined by the Board that such deficiencies constitute a serious health and safety hazard.

NOTE: Authority cited: Section 17705, Education Code. Reference: Section 17702.1, Education Code.

HISTORY

1. New Subgroup 11 (Sections 1865.1–1865.95, not consecutive) filed 2–3–78; effective thirtieth day thereafter (Register 78, No. 5).
2. Amendment of subsections (e) and (g) filed 3–17–80 as an emergency; effective upon filing (Register 80, No. 12). A Certificate of Compliance must be transmitted to OAH within 120 days or emergency language will be repealed on 7–16–80.
3. Certificate of Compliance filed 6–26–80 (Register 80, No. 26).
4. New subsection (l) filed 5–4–81; effective thirtieth day thereafter (Register 81, No. 19).

Article 2. General Provisions

§ 1865.2. Purpose.

The purpose of these regulations is to prescribe the procedures necessary for the implementation and administration of the Leroy F. Greene State School Building Lease–Purchase Law of 1976 (hereinafter referred to as "the act").

§ 1865.3. What May Be Provided.

The act provides for the construction, reconstruction, or replacement of school facilities by the State Allocation Board under an agreement between a school district and the State.

NOTE: Authority cited: Section 17705, Education Code. Reference: Sections 17700–17749, Education Code.

HISTORY

1. Amendment filed 3–17–80 as an emergency; effective upon filing (Register 80, No. 12). A Certificate of Compliance must be transmitted to OAH within 120 days or emergency language will be repealed on 7–16–80.
2. Certificate of Compliance filed 6–26–80 (Register 80, No. 26).

§ 1865.4. Qualifications.

Any school district may qualify to file an application for a lease–purchase project and enter into a lease agreement with option to purchase with the board, providing such applicant school district has sufficient building area entitlement as determined pursuant to the provisions of Article 4 of these regulations to justify the application being filed for new building construction or reconstruction.

NOTE: Authority cited: Section 17705, Education Code. Reference: Sections 17700–17749, Education Code.

HISTORY

1. Repealer and new section filed 3–17–80 as an emergency; effective upon filing (Register 80, No. 12). A Certificate of Compliance must be transmitted to OAH within 120 days or emergency language will be repealed on 7–16–80.
2. Certificate of Compliance filed 6–26–80 (Register 80, No. 26).

§ 1865.5. Executive Officer.

The executive officer shall perform all acts necessary to carry out the provisions of the act except such functions as are reserved to the board and to other agencies by law or by these regulations.

NOTE: Authority cited: Section 17705, Education Code. Reference: Sections 17700–17749, Education Code.

HISTORY

1. Amendment filed 3–17–80 as an emergency; effective upon filing (Register 80, No. 12). A Certificate of Compliance must be transmitted to OAH within 120 days or emergency language will be repealed on 7–16–80.
2. Certificate of Compliance filed 6–26–80 (Register 80, No. 26).

§ 1865.6. Limitation of State Responsibility.

In approving an application for a lease–purchase project and making funds available therefor, neither the State nor any department or agency thereof shall assume any responsibility not otherwise imposed on it by statute or these regulations.

§ 1865.7. References to Education Code Prior to Recodification of 1976.

NOTE: Authority cited: Section 17705, Education Code. Reference: Sections 17700–17749, Education Code.

HISTORY

1. Repealer filed 3–17–80 as an emergency; effective upon filing (Register 80, No. 12). A Certificate of Compliance must be transmitted to OAH within 120 days or emergency language will be repealed on 7–16–80.
2. Certificate of Compliance filed 6–26–80 (Register 80, No. 26).

§ 1865.8. Insurance.

The insurance required by Section 17738 of the act shall be in an amount that will guarantee full replacement or repair of the facilities for which claims are made.

§ 1865.9. Priority Points.

(a) Priority points shall be computed and assigned to applications whenever the board determines that there will be insufficient funds to

meet the estimated needs for all districts in any given fiscal year. Whenever the assignment of priority points is required, applications that are in order for approval shall be considered by the board in sequence according to the number of priority points credited to each application. The board shall from time to time establish the minimum number of priority points necessary to qualify an application for approval consideration by the board. Such minimum shall be based upon the funds available and the estimated needs for the fiscal year.

(b) Priority points shall be computed on a districtwide basis, except for those districts having four or more high school attendance areas (excluding continuation high schools). In such case, points shall be considered on the basis of the attendance area of the project and all attendance areas adjacent thereto.

(c) For the purposes of computing priority points pursuant to the provisions of Section 17716 of the act, all existing building areas except central administration and maintenance facilities, shall be considered.

(d) Priority points for new construction shall be allowed as follows:

(1) Five priority points shall be allowed for each percent of the maximum allowable building area which may be included in an application as new building area (not replacement area).

(2) One priority point shall be allowed for each percent of the maximum allowable building area which may be included in an application as new building area replacing existing inadequate building area.

(3) One priority point shall be allowed for each 5% of increase between the current average daily attendance and the average daily attendance 5 years previously. The current average daily attendance will be based on the enrollment as determined by Section 1865.30(b).

(4) One priority point shall be allowed for each month that the application of the district has been in good order and awaiting approval.

(5) Two priority points shall be allowed for each 30 units of ADA unhoused.

(6) Priority points shall be allowed for the degree of utilization of the facilities in the district or attendance area by dividing the pupil capacity of all the facilities in the district or attendance area, computed by State aid standards, into the actual average daily attendance of the district or attendance area and multiplying such quotient by 10.

(e) Priority points for reconstruction shall be allowed as follows:

(1) Priority points shall be allowed equal to the quotient resulting from the equation $(30 + y^2) / (30 - y)$, where y equals the age, in excess of thirty years, of the building to be reconstructed, but not to exceed 253 points.

(2) Twenty five (25) points shall be allowed for each year in which the age of the building exceeds 57 years.

(3) One priority point shall be allowed for each percent of the pupils of the District or high school attendance area housed in buildings which are older than 30 years.

(4) Priority points shall be allowed for the degree of utilization of the building to be reconstructed by dividing the pupil capacity of the school computed by State aid standards, into the actual number of pupils in attendance in the school and multiplying such quotient by 100.

(5) One priority point shall be allowed for each month that the application of the district has been in good order and awaiting approval.

(6) Priority points computed pursuant to (1) and (2) above shall be reduced by 50% for any building that has been structurally reconstructed within the past 40 years.

(f) If any computation of priority points results in a fraction of a point that is less than one–half, such fraction shall be disregarded and the number of priority points shall be taken as the next lowest whole number. If such computation results in a fraction of a point which is one–half or more, such fraction shall be disregarded and the number of priority points shall be taken as the next highest whole number.

(g) Approvals and lease agreements made in priority order pursuant to this section shall be limited to that portion of a project pertaining to the acquisition of a site and the preparation of construction plans and specifications. Such approvals shall be limited to not more than 25% of the funds made available for the program.

NOTE: Authority cited: Sections 17705 and 17716, Education Code. Reference: Sections 17705, 17716 and 17721, Education Code.

HISTORY

1. New subsection (d)(6) filed 3–24–86; effective thirtieth day thereafter (Register 86, No. 13). For prior history, see Register 84, No. 41.

§ 1865.10. Priority Points for Construction.

(a) Priority points may be computed and applied in the consideration of approvals for construction funds. Such priority points shall be maintained as a separate series from priority points computed pursuant to Section 1865.9 of these regulations, and shall be identified as "priority points for construction." Any such computation of priority points for construction shall be determined as prescribed by said Section 1865.9, except as follows:

(1) The term "maximum allowable building area" in Section 1865.9(d)(1) shall mean the most recent computation of such area rather than that which applied at the time the application was first approved.

NOTE: Authority cited: Section 17705, Education Code. Reference: Sections 17700–17749, Education Code.

HISTORY

1. New section filed 3–17–80 as an emergency; effective upon filing (Register 80, No. 12). A Certificate of Compliance must be transmitted to OAH within 120 days or emergency language will be repealed on 7–16–80.
2. Certificate of Compliance filed 6–26–80 (Register 80, No. 26).

§ 1865.11. Priority Points for Remote Attendance Center.

(a) Upon a finding by the board that an extreme hardship exists as a result of an attendance center of a school district being located in a remote area, in excess of 30 miles from any other attendance center of the district, the board may base the computation of priority points for the remote attendance center in the same manner as if it was a separate school district.

(b) In addition to the provisions of subsection (a), a finding by the board that an extreme hardship exists for an attendance center of a school district due to unique circumstances of topography and emerging population trends, the board may base the computation of priority points for the attendance center in the same manner as if it was a separate school district.

NOTE: Authority cited: Sections 17705 and 17763, Education Code. Reference: Section 17763, Education Code.

HISTORY

1. New section filed 6–26–80; effective thirtieth day thereafter (Register 80, No. 26).
2. New subsection (b) filed 7–28–82; effective thirtieth day thereafter (Register 82, No. 31).

§ 1865.12. Intent.

NOTE: Authority cited: Section 17705, Education Code and Section 15503, Government Code. Reference: Sections 10115–10115.10, Public Contract Code.

HISTORY

1. New section filed 4–18–91; operative 4–18–91 (Register 91, No. 20).
2. Repealer filed 3–13–96 as an emergency; operative 3–13–96 (Register 96, No. 11). A Certificate of Compliance must be transmitted to OAL by 7–11–96 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 3–13–96 order transmitted to OAL 6–14–96 and filed 7–23–96 (Register 96, No. 30).

§ 1865.12.5. Definitions.

NOTE: Authority cited: Section 17705, Education Code and Section 15503, Government Code. Reference: Sections 10115, 10115.1 and 10115.2, Public Contract Code.

HISTORY

1. New section filed 4–18–91; operative 4–18–91 (Register 91, No. 20).
2. Editorial correction of printing error in subsection (e) (Register 91, No. 46).
3. Repealer filed 3–13–96 as an emergency; operative 3–13–96 (Register 96, No. 11). A Certificate of Compliance must be transmitted to OAL by 7–11–96 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 3–13–96 order transmitted to OAL 6–14–96 and filed 7–23–96 (Register 96, No. 30).

§ 1865.13. Minority and Women Business Enterprise Goals.

NOTE: Authority cited: Section 17705, Education Code and Section 15503, Government Code. Reference: Sections 10115 and 10115.2, Public Contract Code.

HISTORY
1. New section filed 4–18–91; operative 4–18–91 (Register 91, No. 20).
2. Repealer filed 3–13–96 as an emergency; operative 3–13–96 (Register 96, No. 11). A Certificate of Compliance must be transmitted to OAL by 7–11–96 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 3–13–96 order transmitted to OAL 6–14–96 and filed 7–23–96 (Register 96, No. 30).

§ 1865.14. Requirements of Awarding Department Agent.

NOTE: Authority cited: Section 17705, Education Code and Section 15503, Government Code. Reference: Sections 10115–10115.2, Public Contract Code.

HISTORY
1. New section filed 4–18–91; operative 4–18–91 (Register 91, No. 20).
2. Repealer filed 3–13–96 as an emergency; operative 3–13–96 (Register 96, No. 11). A Certificate of Compliance must be transmitted to OAL by 7–11–96 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 3–13–96 order transmitted to OAL 6–14–96 and filed 7–23–96 (Register 96, No. 30).

§ 1865.15. Requirements of Awarding Department.

NOTE: Authority cited: Section 17705, Education Code and Section 15503, Government Code. Reference: Sections 10115, 10115.1, 10115.2, and 10115.3(a), Public Contract Code.

HISTORY
1. New section filed 4–18–91; operative 4–18–91 (Register 91, No. 20).
2. Repealer of section and editorial correction of NOTE filed 3–13–96 as an emergency; operative 3–13–96 (Register 96, No. 11). A Certificate of Compliance must be transmitted to OAL by 7–11–96 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 3–13–96 order transmitted to OAL 6–14–96 and filed 7–23–96 (Register 96, No. 30).

§ 1865.16. Requirements of Bidder.

NOTE: Authority cited: Section 17705, Education Code and Section 15503, Government Code. Reference: Sections 10115–10115.2, 10115.10, Public Contract Code.

HISTORY
1. New section filed 4–18–91; operative 4–18–91 (Register 91, No. 20).
2. Repealer filed 3–13–96 as an emergency; operative 3–13–96 (Register 96, No. 11). A Certificate of Compliance must be transmitted to OAL by 7–11–96 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 3–13–96 order transmitted to OAL 6–14–96 and filed 7–23–96 (Register 96, No. 30).

§ 1865.17. Good Faith Effort.

NOTE: Authority cited: Section 17705, Education Code and Section 15503, Government Code. Reference: Sections 10115.2 and 10115.2, Public Contract Code.

HISTORY
1. New section filed 4–18–91; operative 4–18–91 (Register 91, No. 20).
2. Repealer filed 3–13–96 as an emergency; operative 3–13–96 (Register 96, No. 11). A Certificate of Compliance must be transmitted to OAL by 7–11–96 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 3–13–96 order transmitted to OAL 6–14–96 and filed 7–23–96 (Register 96, No. 30).

§ 1865.18. Contract Award.

NOTE: Authority cited: Section 17705, Education Code and Section 15503, Government Code. Reference: Sections 10115, 10115.1 and 10115.2, Public Contract Code.

HISTORY
1. New section filed 4–18–91; operative 4–18–91 (Register 91, No. 20).
2. Repealer filed 3–13–96 as an emergency; operative 3–13–96 (Register 96, No. 11). A Certificate of Compliance must be transmitted to OAL by 7–11–96 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 3–13–96 order transmitted to OAL 6–14–96 and filed 7–23–96 (Register 96, No. 30).

§ 1865.19. Contract Audits.

NOTE: Authority cited: Section 17705, Education Code and Section 15503, Government Code. Reference: Section 10115.3(a), Public Contract Code.

HISTORY
1. New section filed 4–18–91; operative 4–18–91 (Register 91, No. 20).
2. Repealer filed 3–13–96 as an emergency; operative 3–13–96 (Register 96, No. 11). A Certificate of Compliance must be transmitted to OAL by 7–11–96 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 3–13–96 order transmitted to OAL 6–14–96 and filed 7–23–96 (Register 96, No. 30).

§ 1865.20. Penalties for Fraudulent Bidders.

NOTE: Authority cited: Section 17705, Education Code and Section 15503, Government Code. Reference: Sections 10115–10115.10, Public Contract Code.

HISTORY
1. New section filed 4–18–91; operative 4–18–91 (Register 91, No. 20).
2. Repealer filed 3–13–96 as an emergency; operative 3–13–96 (Register 96, No. 11). A Certificate of Compliance must be transmitted to OAL by 7–11–96 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 3–13–96 order transmitted to OAL 6–14–96 and filed 7–23–96 (Register 96, No. 30).

§ 1865.22. Filing and Review of Applications.

A complete application shall be filed with the executive officer of the board.

NOTE: Authority cited: Sections 17705 and 17717, Education Code. Reference: Section 17717, Education Code.

HISTORY
1. Amendment filed 12–21–84; effective thirtieth day thereafter (Register 84, No. 51).

§ 1865.23. Changes in Application After Original Approval.

An applicant may, after approval of an application but prior to entering into a lease–purchase agreement, request approval of changes within the application.

Article 4. Eligible Facilities

§ 1865.30. Estimated Average Daily Attendance (ADA).

(a) The estimated ADA of a school district or attendance area as required by Section 17740 of the act for determining the allowable building area shall be computed by this section. No estimate will be used unless approved by the executive officer of the board.

(b) For the purpose of estimating ADA, the following definitions shall apply:

(1) "Enrollment" means the graded enrollment of minors of the district as reported to the Department of Education on Form R–30 (or any succes-

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sor form). Comparable enrollment data for the end of the first or sixth school month may be acceptable if verified by the appropriate county superintendent of schools.

Enrollment shall include only those students who actually reside in the school district and any students who reside in the district but attend school in other than the district of residence. Enrollment shall exclude high school pupils who attend continuation classes.

(2) "Projected enrollment" means graded enrollment as determined by the cohort survival method for a period of two years for the elementary grades and for a period of three years for the high school grades.

(3) "Pupil units attending continuation classes" is computed as follows: First determine the average number of pupil hours of attendance in high school continuation classes per school day in the highest three months of the latest 12 months, then divide the average by six. In making this computation, pupil hours during the regular school day in excess of 15 per week shall be included. Pupil hours for evening or Saturday classes shall be excluded. Multiply the final figure obtained in the preceding calculation by a factor which is computed by dividing the "projected enrollment" by the "current enrollment." The result is the "pupil units attending continuation classes."

In the event the district is applying for a continuation high school facility and has students who have not yet been screened and assigned to continuation classes because of lack of suitable space, the district may submit an identified list of such pupils. The average number of pupil hours of high school attendance in continuation classes per school day as computed above may be augmented by the pupil hours obtained by multiplying the number of names on the list by three, or in the event the district can prove that continuation high school pupils attend classes for an average of more than three hours per day, such larger multiplier may be used. When an identified list of prospective continuation high school pupils is used, the number of pupils on such list shall be excluded from the graded enrollment.

(4) "Exceptional children" means those pupils assigned to special education classes as of the latest enrollment, plus a verified count of such pupils who are not attending classes of the district but will become a part of the attendance of the district when approved facilities for such pupils have been completed.

(5) "Estimated average daily attendance" means the projected enrollment multiplied by .97 plus the exceptional children assigned to special education classes, plus the pupil units attending high school continuation classes.

(6) "Housecount" means an enumeration of new housing units that are under construction, i.e. units that have at least reached the stage of foundations in place, and have not yet been completed and occupied, classified by type of housing unit as the board may prescribe. Such housing units shall not include hotel or motel accommodations or other living quarters generally used as transient or short–term accommodations, but may include spaces under construction for mobile homes which the board determines to be essentially for long–term occupancy. The definition of housecount prescribed herein may be modified from time to time as may be necessary to classify new housing units in the most appropriate manner for the purpose of measuring the pupil yield of such units.

(c) The projected enrollment shall be determined by the cohort survival method in accordance with the following and by the use of such forms and instructions as the board may prescribe.

(1) List either the latest enrollment for the end of the first school month or the subsequent sixth school month and the enrollment for the same period for the three preceding years. All applications approved by the board after April 30 of any given year shall be based on the enrollment as of the end of the sixth school month of the most recent year. Such enrollment shall be listed by level for each grade included in the application. High school applications shall also list the four highest grades of component elementary enrollment.

(2) Determine the numerical change in enrollment between each given grade in one year and the next higher grade in the succeeding year for each period and grade listed in (1) above. With respect to kindergarten enrollment (or first grade enrollment if no kindergarten is maintained), determine the numerical change in kindergarten (or first grade) enrollment between each period listed in (1) above, or alternatively, annual changes in enrollment based on a local census or survey of preschool children conducted according to such procedures as the board may prescribe.

(3) Compute the average annual change in enrollment for each grade maintained at the grade level of the application. The average shall be a weighted average computed by multiplying the most recent annual change in enrollment by three, the next most recent change by two, and the earliest change by one, and dividing the sum of the weighted changes by six.

(4) Progress the latest reported enrollment through the applicable two or three year projection period, modifying the grade progression each year by the average annual change for each grade as computed in (3) above.

(d) From the projected enrollment, compute the estimated average daily attendance as defined in Subsection (b)(5) above.

(e) In the event that there is good reason to believe the number of pupils being added from construction of new housing units exceeds the number implicit in the cohort survival computation and when the land area of the district is less than 75% developed, the board may, at its discretion, modify the estimated average daily attendance as follows:

(1) Determine the graded enrollment one year from the latest reported enrollment by a one–year grade progression, adjusted for dropouts at the high school level.

(2) Determine the enrollment derived from new homes implicit in the cohort survival computation as follows: (i) Subtract the enrollment computed in (1) above from the one–year projection of enrollment as determined by the cohort survival method; (ii) To the remainder, add two percent of the latest enrollment for the end of the first or sixth school month, whichever is applicable. If the foregoing computations result in a negative number, the number shall be deemed to be zero.

(3) Determine the pupil yield per housing unit of housecount, as established by a survey of occupied housing units in the district, for the current year and the two preceding years. The survey shall take into consideration the different pupil yields of multiple and single family housing units or other significant yield characteristics. The current year yield factor for each type of housing unit shall be modified by the average annual difference of the factor for each type for the two preceding years.

(4) I the event that prior year data referred to in (3) is unavailable, the current yield factor shall be modified as the board shall prescribe.

(5) Establish the pupil yield of the housecount by multiplying the number of housing units in the housecount by the applicable yield per housing unit as determined above. Subtract the enrollment from new homes determined in (2) above from the yield of the housecount; the result of this computation is the amount by which the graded enrollment computed under the cohort survival method shall be changed.

(6) The housecount and surveys described in (3) and (4) shall be conducted by the district in accordance with methods, procedures, and standards which are approved by the Office of Local Assistance with respect to each specific case.

(f) Other provisions of this section notwithstanding, high school enrollment of a district or attendance area for the end of the first school month may be used for estimating ADA.

§ 1865.31. Estimated Average Daily Attendance—High School Attendance Area.

(a) As permitted by Section 17741, a district may file an application based upon a high school attendance area rather than a districtwide basis. A high school district or a unified school district filing on a high school level would base its application on enrollment estimated to attend such high school and upon facilities already existing in such high school attendance area. An elementary school district or unified district filing on an elementary level would base its application on the enrollment and exist-

ing facilities of the elementary schools serving the high school attendance area under consideration.

(b) The estimated average daily attendance of a high school attendance area as permitted by Section 17741 of the act for determining the allowable building area, when the district is applying only on a high school attendance area basis as opposed to a districtwide basis, shall be computed in the same manner as that set forth in regulation 1865.30, except that the enrollment used in such computation shall be that of the high school attendance area rather than the entire district and shall be certified by the district.

(c) In those instances where the high school attendance area results in a split in individual attendance areas of the contributing elementary or junior high schools, an assignment of enrolled pupils in such split attendance areas shall be made by the district in a manner satisfactory to the executive officer.

§ 1865.32. Application for Site and/or Plans.

In order to expedite a total school facility, a school district may first apply for a project which includes only the advance purchase of the land and preparation of plans and specifications. The acquisition of the site and the plans preparation shall be based on justification documents for the total school facility.

§ 1865.32.5. Utilization of Existing Facilities.

(a) If the board determines that it will not be economical or practical to utilize all existing facilities of the district, project approval then will be contingent upon the agreement by the district to dispose of any salable interest in any building or site that the board determines cannot be utilized and contribute the net proceeds of the sales to the State School Building Lease–Purchase Fund as rents pursuant to Section 17732 of the act.

(b) Approval of a project applied for pursuant to Section 17741 of the act will be contingent upon the conditions specified in subdivisions (a) and (b) of this section.

NOTE: Authority cited: Section 17705, Education Code. Reference: Sections 17722 and 17732, Education Code.

HISTORY

1. New section filed 3–17–80 as an emergency; effective upon filing (Register 80, No. 12). A Certificate of Compliance must be transmitted to OAH within 120 days or emergency language will be repealed on 7–16–80.
2. Amendment of subsection (b) filed 5–4–81; effective thirtieth day thereafter (Register 81, No. 19).
3. Amendment filed 12–21–84; effective thirtieth day thereafter (Register 84, No. 51).

§ 1865.33. Computation of Allowable School Building Area.

(a) No project shall be approved, the building area of which, when added to the area of adequate school construction existing in the applicant school district or the applicable high school attendance area if the application is filed on such basis, will provide a total area of school building construction in excess of that computed pursuant to Education Code Sections 17740 through 17749.

(b) All of the existing building area owned or operated by the district regardless of conditions or purpose for which used, shall be reported to the board by the district as prescribed in this regulation. Where an allowable building area is computed on the basis of an attendance area as provided by Section 17741 of the act, the existing building area shall be considered the building area within such attendance area.

(c) Existing adequate building area shall include all existing building area not otherwise excluded by the act or these regulations, building area for which applications have been approved under any state or federal building program, any building area being acquired by any lease–purchase agreement, proposed building area which has been otherwise financed or any building area which has been used to justify any site and/or plans lease–purchased project under this act. Existing building area shall be excluded as follows:

(1) The area of any building to which Article 3 of Chapter 2, Part 23 of the Education Code would not apply.

(2) The area of any relocatable structure for temporary use building under lease pursuant to Education Code Sections 39243 or 39246.

(3) The area of any district administration or district maintenance facilities except those constructed pursuant to the Leroy F. Greene State School Building Lease–Purchase Law of 1976.

(d) Existing and proposed building area shall be computed in accordance with the following:

(1) All measurements shall be made from exterior rough wall lines.

(2) Totally enclosed space shall be counted as full area. Among the various types of space to be included shall be areas such as:

(A) Basement rooms and basement boiler rooms.

(B) Heater rooms, including those above the normal floor level.

(C) Each floor of multi–story buildings.

(D) The area of completely enclosed stairs for each floor level served.

(3) Certain partially enclosed areas shall be counted as full area and shall include:

(A) Open, covered areas which provide shelter between buildings that are less than 20 feet apart.

(B) Mezzanines open on one or more sides which may easily and readily be used or converted to use as instructional space or passageways.

(C) Each floor of library stacks.

(4) Covered unenclosed space shall be counted as one–half of the actual area. Included in such space are:

(A) Open, covered passages, arcades, shelters, porches, and planting areas.

(B) Open, covered areas which provide shelter between buildings that are 20 feet apart or more.

(C) Overhangs and sun control devices which are so designed and located that they function as, and in lieu of, covered walks or other shelter areas.

(D) Mezzanines for storage purposes.

(5) Areas which shall not be counted include:

(A) Eaves and sun control devices except as specified above.

(B) Unsheltered platforms and steps.

(C) When isolated from building structures, the area of incinerators, pumphouses, transformer vaults, and service yards.

(D) Elevator shafts where constructed in order to comply with Chapter 7 of Division 5 of the Government Code (commencing with Section 4450), relating to facilities for handicapped persons.

(E) That portion of the area below the first floor of a multistory building used exclusively for employee parking, provided the board finds that other means of parking are not economically feasible.

NOTE: Authority cited: Section 17705, Education Code. Reference: Sections 17740–17749, Education Code.

HISTORY

1. New subsection (c)(3) filed 6–26–80; effective thirtieth day thereafter (Register 80, No. 26).
2. Amendments of subsections (b) and (c) filed 5–4–81; effective thirtieth day thereafter (Register 81, No. 19).

§ 1865.34. Allowable School Building Area for Facilities for Exceptional Children.

(a) In conformity with the requirements of Section 17747 of the Education Code, the board establishes allowable building areas for the education of physically handicapped, educationally handicapped, and mentally retarded minors, to be computed as follows:

(1) Divide the number of eligible pupils by the maximum class size established by law for special day classes for the type of pupils to be enrolled and increase the quotient to the next highest integer where a fractional amount is produced.

(2) Multiply the number computed in (1) by the maximum building area allowance shown below when the facility is planned for the following types of exceptional children:

Types of Pupils	Maximum Class Size		Area Allowance—Sq. Ft.		
	Ages 3–8	Ages 9–20	K–8	7–9	9–12
Austistic	6	6	1080	1080	1080
Deaf, Aphasic, Multihandicapped *, or Combination of Deaf & Severely Hard of Hearing	6	8	1235	1335	1360
Blind, Severely Hard of Hearing, or Combination of Blind & Partially Seeing	8	10	1290	1410	1440
Partially Seeing	10	12	1290	1410	1440
Educationally Handicapped	12	12	1080	1080	1080
Trainable Mentally Retarded	12	12	1860	1860	1860
Educable Mentally Retarded	18 (See 3)	18 (See 3)	1373	1635	1680
Orthopedically Handicapped	12	16	2000 (See 4)	2000 (See 4)	2000 (See 4)
Development Centers for Handicapped Pupils	10	10	2000 (See 4)	2000 (See 5)	2000 (See 5)
Deaf-Blind Multihandicapped	3	5	1500 (See 4)	1500 (See 4)	1500 (See 4)

* Other than Deaf-Blind Multihandicapped

(3) When the chronological age span of educable mentally retarded minors is greater than four years, the maximum class size shall be 15 pupils.

(4) When facilities to be constructed will include occupational therapy, physical therapy, and related auxiliary spaces for orthopedically handicapped minors, additional building area allowances for such spaces of up to 5,200 square feet shall be made if the facility is designed for one to three classes and up to 7,000 square feet for four to eight classes.

(5) When facilities are to be constructed for deaf–blind multihandicapped, a one–time additional building area allowance of 500 square feet per school will be made for the initial construction of facilities.

(6) When facilities are to be constructed for blind or partially seeing minors served in an integrated instructional program which is housed in two or more schools, the building area allowance may be allocated among the schools when approved by the Department of Education. No area of instruction shall be allowed which is less than 200 square feet.

(7) When facilities are to be provided for minors having speech defects or disorders, additional building area per school is permitted. This additional area allowance is limited to:

(a) 200 square feet of new building area per school in schools constructed after July 1, 1968, where such schools are designed to permit utilization for remedial and other special services.

(b) 200 square feet of new building area per school in schools constructed between July 1, 1933 and July 1, 1968, where such additional area allowance is used for the construction of a new speech facility.

(c) Conversion of existing facilities or a combination of new construction and conversion of such existing facilities to provide housing for such minors having speech defects or disorders, provided the cost does not exceed the computed cost for 200 square feet of new classroom construction based upon cost standards adopted by the board.

(d) The acquisition of mobile speech therapy facilities, provided the cost does not exceed the combined computed cost for 200 square feet of new classroom construction, based upon cost standards adopted by the board, at all such schools which will be served by the mobile facility.

NOTE: Authority cited: Section 17705, Education Code. Reference: Sections 17700–17749, Education Code.

HISTORY

1. Amendment filed 3–17–80 as an emergency; effective upon filing (Register 80, No. 12). A Certificate of Compliance must be transmitted to OAH within 120 days or emergency language will be repealed on 7–16–80.
2. Certificate of Compliance filed 6–26–80 (Register 80, No. 26).
3. Amendment filed 6–1–81 as an emergency; effective upon filing (Register 81, No. 23).
4. Order of Repeal of 6–1–81 emergency order filed 6–5–81 by OAL pursuant to Government Code Section 11349.6 (Register 81, No. 23).

§ 1865.35. Allowable Building Area for Small Elementary School Districts.

(a) For the purpose of computing the building area allowance for small elementary school districts in accordance with Section 17743 of the Education Code, the following shall apply:

(1) In an applicant district maintaining any combination of grades kindergarten through 6 with an estimated average daily attendance of less than 300 in such grades:

Estimated ADA in Kindergarten and Grades 1–6	*Maximum Total Building Area (Sq. Ft.)*
6–25	1,600
26–50	3,800
51–75	5,700
76–100	7,200
101–133	8,415
134–166	10,200
167–199	12,000
200–232	13,360
233–285	15,675
286–299	16,500

(2) In an applicant district maintaining any combination of grades kindergarten through 8 with an estimated average daily attendance of less than 300 in grades kindergarten through 6, there shall be allowed, in addition to the maximum total building area shown above, a maximum area of 75 sq. ft. for each attendance unit in grades 7 and 8.

§ 1865.36. Allowable Building Area for Continuation High Schools.

(a) The estimated average daily attendance for continuation high schools shall be based on those pupil units attending continuation classes (as defined in Section 1865.30(b)(3) of these regulations) which are assigned to the continuation high school.

(b) Building area shall be allowed for the continuation high school in accordance with the following schedule:

Pupil Units of Continuation High School	*Square Feet of Building Area*
5 to 20	2,300
21 to 40	2,300 + 125 for each pupil unit over 20
41 to 60	4,800 + 120 for each pupil unit over 40
61 to 90	7,200 + 115 for each pupil unit over 60
91 to 120	10,650 + 105 for each pupil unit over 90
121 to 150	13,800 + 90 for each pupil unit over 120
Over 150	16,500 + 60 for each pupil unit over 150

(c) For purposes of this section, a continuation high school must be physically and operationally distinguishable from other schools. If the continuation high school shares space with another type of school, it can

be considered to be a continuation high school within the meaning of this section only if the district can show conclusively that the continuation facility is in fact a separate institution with its own administration, teaching staff, and course of study, located in a clearly identifiable building area.

NOTE: Authority cited: Sections 17705 and 17742, Education Code. Reference: Sections 17740–17751, Education Code.

HISTORY

1. Amendment of subsection (b) filed 3–5–90; operative 4–4–90 (Register 90, No. 10).(p. 71.72.50.6.1)

§ 1865.37. Minimum Essential Instructional Facilities.

In the event the existing area of the district as determined pursuant to Section 17742 of the act results in a district being unable to apply for the minimum amount of essential instructional facilities required, the existing area may be reduced, with the approval of the board, by an amount sufficient to permit such essential instructional facilities to be constructed under the act. Such reduction shall be construed as being for the purpose of alleviating any substantial hardship which might otherwise occur.

§ 1865.38. Building Cost Standards.

(a) Pursuant to Section 17717 of the act, the board shall establish allowable school building cost standards which shall be effective until next revised.

(b) No application or bid shall be approved and no funds shall be provided for any construction which exceeds the allowable costs established as provided herein. In the event, however, that it is shown from any studies by the board that actual building costs in an area or portion of an area differ substantially from the allowable costs established for the area, the board may at any time revise the allowable building cost standards for the area or create additional areas and establish appropriate allowable cost standards for such additional areas.

§ 1865.39. Unconventional Sources of Energy.

Where a school district requests an increased cost allowance for the design and construction of facilities which will conserve unreplenishable energy resources pursuant to Section 17718 of the act, a life cycle cost comparison must be submitted to the board. Such cost comparison shall be prepared by a competent authority and provide for the amortization of the increased cost allowance over a period not to exceed the lesser of 30 years or the term of the lease.

§ 1865.40. Reconstruction or Replacement.

(a) No project shall be approved for reconstruction, the cost of which will exceed cost standards established by the board for replacement of the amount of area equivalent to the actual reconstruction area.

(b) Replacement. No building shall be replaced until the board has made a finding that it would not be economical or good practice to reconstruct the school facilities to meet present–day educational and structural standards.

NOTE: Authority cited: Section 17705, Education Code. Reference: Sections 17705, 17716 and 17721, Education Code.

HISTORY

1. Amendment of subsection (a)(1) filed 3–17–80 as an emergency; effective upon filing (Register 80, No. 12). A Certificate of Compliance must be transmitted to OAH within 120 days or emergency language will be repealed on 7–16–80.
2. Certificate of Compliance including amendment filed 6–26–80 (Register 80, No. 26).
3. Amendment filed 10–10–84; effective thirtieth day thereafter (Register 84, No. 41).

§ 1865.41. Site Development.

(a) Site development for new building area may be included as a part of the project and classified as follows:

(1) Utility Services may include but are not limited to facilities required to bring water, sewer, electricity, telephone, and fuel supply services to such suitable point on the site as may be necessary for the functioning of a project.

(2) Off–site Development may include but is not limited to such street improvements as are in line with the approved standards of the board and as are determined by the executive officer to be necessary. However, whenever a school building to be constructed pursuant to an apportionment under the act is situated in a city, city and county, or county which requires the construction of any street or road connected with the school premises on which the building is situated, the board shall review the requirement and recommend to the entity in question a plan of construction adequate to meet the needs of the school district and safety of the public. Thereafter, if any different plan of improvement or improvement to higher standards than so recommended is required by such entity, the additional cost shall be borne by the entity as provided in Section 2117 of the Streets and Highways Code.

(3) Service Site Development may include but is not limited to site clearance, rough grading, and drainage which may be required to make a site usable in accordance with standards established by the board.

(4) General Site Development may include but is not limited to any other development of a site, including such items as grading (except rough grading), walks, curbs, roadways, parking areas, fencing, flagpoles, incinerators, hand–surfaced and turfed play areas, landscaping, and playground equipment.

In the event the proposed construction consists of an addition to an existing school plant (whether financed by State Funds or by other means) the countable existing construction area and the existing site development shall be evaluated by the Director of General Services in determining any allowance for general site development.

(b) Site development for reconstruction is limited to replacement of walks or paving which are destroyed as a result of the reconstruction work, and may be required for handicapped requirements. Off–site work and utilities will not be considered unless justification has been submitted that the reconstructed facility cannot be adequately functional without such improvements.

NOTE: Authority cited: Section 17705, Education Code. Reference: Sections 17705, 17716 and 17720, Education Code.

HISTORY

1. Repealer of subsection (a)(3) and new subsections (a)(3), (a)(4), and (a)(4)(A) filed 3–17–80 as an emergency; effective upon filing (Register 80, No. 12). A Certificate of Compliance must be transmitted to OAH within 120 days or emergency language will be repealed on 7–16–80.
2. Amendment filed 10–10–84; effective thirtieth day thereafter (Register 84, No. 41).

§ 1865.42. Furniture and Equipment.

(a) Furniture and equipment may be included as part of the project.

(b) Cost standards for furniture and equipment shall be established on a quarterly basis by the board based upon the kinds, quality, quantities, and costs of furniture and equipment most commonly acquired by school districts for comparable facilities.

(c) Before requesting funds for furniture and equipment for a project, the district shall give full consideration to all usable furniture and equipment existing in the district. The district may apply for funds to provide such furniture and equipment as needed to complete the project within the standards established by the board. The furniture and equipment allowance for replacement or reconstruction projects cannot exceed 50% of the allowance for comparable new facilities unless specifically approved by the board.

(d) An allowance will be calculated for each construction project in accordance with 1865.42(b) and (c) above. The amount so calculated will be authorized as the cash allowance for the project to be expended by the district in furnishing and equipping the project.

(e) Furniture and equipment shall be purchased by the district by competitive bidding where required to do so by the Education Code or other provisions of law. However, even where the district is not otherwise required to purchase the same through competitive bidding, the board may

require the district to do so where it believes that it is likely that such bidding would result in a lower cost than other methods.

§ 1865.43. Repairs, Renewals, and Replacements.

(a) The district shall make all repairs, renewals and replacements necessary to keep the project in good repair, working order and condition at all times. All costs for this purpose will be borne by the district.

(b) In the event the project requires repairs, renewals or replacements as a result of damages from any cause, casualty, or otherwise, the district shall make the same. In such event the board shall contribute any insurance funds available to it for this purpose.

NOTE: Authority cited: Section 17705, Education Code. Reference: Sections 17700–17749, Education Code.

HISTORY

1. Repealer and new section filed 3–17–80 as an emergency; effective upon filing (Register 80, No. 12). A Certificate of Compliance must be transmitted to OAH within 120 days or emergency language will be repealed on 7–16–80.
2. Certificate of Compliance filed 6–26–80 (Register 80, No. 26).

Article 5. Project Approvals and Lease–Purchase Agreements

§ 1865.50. Approval of Applications.

The board may approve in whole or in part any application submitted pursuant to the Act. Upon receipt of the application, the executive officer shall review it for proper form and compliance with statutes and regulations of the board. After such review and any necessary corrections, the executive officer shall present the application to the board with recommendations, in whole or in such part as will satisfy the board's policy of approving funds for feasibility studies, site acquisition and/or preparing plans and specifications, and project construction in separate increments, whereupon the board shall consider the application provided it (the application) has sufficient priority to warrant such consideration. If the application meets with the board's approval, it shall grant its approval and shall make an apportionment for the financing of the project from any sources available for such purposes. The apportionment shall be conditioned upon the district subsequently entering into a lease–purchase agreement with the state. After such approval and apportionment of funds, the executive officer of the board shall authorize the district, as the agent of the board, to perform all acts necessary to effectively complete the particular phase of the approved project. Such authorization shall be specifically set forth in writing to the district and shall be conditioned upon the district having entered into or subsequently entering into a lease–purchase agreement with the board either in the form of (1) a lease–purchase for feasibility studies, (2) the lease–purchase of a site and/or plans, or (3) the lease–purchase of an entire project. Failure on the part of the district to enter into such agreement shall invalidate such authorization, and any obligations incurred as a result thereof shall become the sole responsibility of the district. Upon receipt of successive phases of the project, the executive officer shall have the authority to amend the project budget within the apportionment so made or to reduce the total apportionment to conform to the project as bid. The executive officer is authorized to enter into a lease–purchase agreement or agreements with the district on behalf of the board.

NOTE: Authority cited: Section 17705, Education Code. Reference: Sections 17700–17749, Education Code.

HISTORY

1. Amendment filed 3–17–80 as an emergency; effective upon filing (Register 80, No. 12). A Certificate of Compliance must be transmitted to OAH within 120 days or emergency language will be repealed on 7–16–80.
2. Certificate of Compliance including amendment filed 6–26–80 (Register 80, No. 26).

§ 1865.51. Apportionment.

(a) In addition to complying with any other requirements of these regulations or the act, the board, at the time of making an apportionment, shall:

(1) Approve a total estimated cost and a budget for the project.

(2) Prescribe the purposes for which an apportionment may be expended.

(3) Prescribe the manner, terms, and conditions for releasing the apportionment to the district.

(b) Notwithstanding anything to the contrary in these regulations, the board shall have power to modify any apportionment or resolution of apportionment where it determines good cause exists therefor.

NOTE: Authority cited: Section 17705, Education Code. Reference: Sections 17700–17749, Education Code.

HISTORY

1. Repealer of subsections (a)(4)–(5) filed 3–17–80 as an emergency; effective upon filing (Register 80, No. 12). A Certificate of Compliance must be transmitted to OAH within 120 days or emergency language will be repealed on 7–16–80.
2. Certificate of Compliance filed 6–26–80 (Register 80, No. 26).

§ 1865.52. Rental Payment.

The rental payments required by Section 17732 of the act will become due and payable on September 15 following the date the lease–purchase agreement is executed and on each successive September 15th thereafter during the life of this agreement. The payment may be in the form of a contribution toward the cost of an ongoing project or as a direct remittance. An Annual Certification of Funds Available for Rents shall be submitted by each district prior to August 15 each year. The payment required for a district desiring to exercise an option to purchase shall be the total cost of the project less any rental payments made or to be made from sources identified in Section 17732(c) and (d) of the act.

NOTE: Authority cited: Section 17705, Education Code. Reference: Sections 17700–17749, Education Code.

HISTORY

1. Repealer and new section filed 3–17–80 as an emergency; effective upon filing (Register 80, No. 12). A Certificate of Compliance must be transmitted to OAH within 120 days or emergency language will be repealed on 7–16–80.
2. Certificate of Compliance filed 6–26–80 (Register 80, No. 26).

Article 6. Project Budget

§ 1865.60. Contents of Project Budget.

(a) The project budget prescribed by the board shall be set up in such a manner as to contain all costs attributable to the project, categorized as follows: Sites; Plans; Construction; Tests; Inspection; Furniture and Equipment; and Contingencies. Within these major categories the following limitations shall apply:

(1) Sites:

(A) The board shall not authorize the expenditure of any funds for real property in excess of the fair market value of such property.

(B) Relocation assistance costs to landowners or persons displaced pursuant to Sections 7260 et seq. of Chapter 16, Division 7, Title I of the Government Code, referred to as the "Relocation Assistance Law," in conjunction with an acquisition of a site for which an application for a lease–purchase project is made, shall be administered by the district affected in accordance with the requirements of said sections.

(2) Plans:

(A) Fees for architectural and engineering services, including architectural supervision, shall not exceed the standards established by the board.

(B) The board shall require that each architectural contract contain a clause to the effect that the architect shall be responsible for making, without additional cost to the district, any changes or redesigning made necessary as a result of the bids exceeding the cost standards established by the board.

(C) Any other plan fees or changes required by law.

(3) Construction: Costs shown for construction shall not exceed the cost standards established by the board.

(4) Tests: The amount for tests shall be limited to the actual costs of tests which are required by Title 21 of the California Administrative Code or other applicable provisions of law, or which are in accordance with good or accepted practice.

(5) Inspection: The amount for inspection shall be limited to such amounts as is required to insure that the project is completed in accordance with plans and specifications and any other legal requirements.

(6) Furniture and Equipment: The amount for furniture and equipment shall be limited to that determined pursuant to Section 1865.42 hereof.

(7) Contingencies:

(A) An amount may be included for contingencies which shall not exceed such maximums as the board may prescribe for any class of application or value of facilities in a project budget.

(B) Contingency funds may be used only after specific approval by the executive officer for items of construction or other approved project costs where the cost increase or the item required is necessary for the completion of a facility which has been approved by the board.

NOTE: Authority cited: Section 17705, Education Code. Reference: Section 17729, Education Code.

HISTORY

1. New subsection (a)(2)(C) filed 3–17–80 as an emergency; effective upon filing (Register 80, No. 12). A Certificate of Compliance must be transmitted to OAH within 120 days or emergency will be repealed on 7–16–80.
2. Certificate of Compliance filed 6–26–80 (Register 80, No. 26).
3. Amendment of subsection (a)(2)(A) filed 5–4–81; effective thirtieth day thereafter (Register 81, No. 19).

§ 1865.61. Revision of a Project Budget.

(a) The executive officer may revise any item within a project budget, upward or downward, provided that no such revision results in an increase in the total amount of the project budget approved by the board.

(b) The executive officer may reduce any apportionment as may be necessary to reflect any revision made pursuant to (a) above.

Article 7. Disposition of Property

§ 1865.70. Disposition of School Buildings or Land.

Whenever a district disposes by sale or lease of any land or buildings no longer needed for school purposes, the net proceeds therefrom shall be remitted to the state, as rental payments pursuant to Education Code Section 17732. Such payment(s) shall be applied to the outstanding balance of any approved projects in the order(s) of approval.

NOTE: Authority cited: Section 17705, Education Code. Reference: Sections 17700–17749, Education Code.

HISTORY

1. Repealer and new section filed 3–17–80 as an emergency; effective upon filing (Register 80, No. 12). A Certificate of Compliance must be transmitted to OAH within 120 days or emergency language will be repealed on 7–16–80.
2. Certificate of Compliance filed 6–26–80 (Register 80, No. 26).

§ 1865.70.5. Justification of Surplus School Site.

Whenever disposition of a surplus school site is required as a condition of approval of a project and an apportionment of funds pursuant to Education Code Section 17760 et. seq., the existence of the surplus school site shall be deemed to be justified in accordance with the provisions of Education Code Section 17762 while the disposition process is occurring.

NOTE: Authority cited: Sections 17705 and 17763, Education Code. Reference: Section 17762, Education Code.

HISTORY

1. New section filed 7–28–82; effective thirtieth day thereafter (Register 82, No. 31).

§ 1865.71. Disposition of Excess Improvements Acquired with Site Purchase.

(a) Excess improvements acquired with a site purchase shall be offered for sale prior to the advertising of a project for construction bids, in accordance with the method and manner prescribed for the sale of personal property under Section 39520 et seq. of the Education Code. The net proceeds received from any such disposition shall be deposited in the County School Lease–Purchase Fund as a credit against the cost of the project.

(b) When facilities acquired with a site purchase have been offered for sale pursuant to Section 39520 et seq. of the Education Code and no acceptable bids are received prior to the time the construction project is ready to be advertised for construction bids, the district shall adopt a resolution making a finding that the property is of insufficient value to defray the costs of arranging a subsequent sale as provided by Section 39521(b) of the Education Code and proceed to demolish such property using funds approved in the project for this purpose.

NOTE: Authority cited: Section 17705, Education Code. Reference: Sections 17700–17749, Education Code.

HISTORY

1. Amendment of subsection (a) filed 3–17–80 as an emergency; effective upon filing (Register 80, No. 12). A Certificate of Compliance must be transmitted to OAH within 120 days or emergency language will be repealed on 7–16–80.
2. Certificate of Compliance filed 6–26–80 (Register 80, No. 26).

Article 8. Lease–Purchase of Sites and Plans

§ 1865.75. Advance Purchase of Sites and Preparation of Plans.

(a) Except as otherwise provided by the act or these regulations, the provisions of these regulations shall apply to applications for sites and/or plans and specifications made pursuant to Section 17720 of the act.

(b) Nothing contained in the regulations shall be construed to prohibit the executive officer from entering into a lease agreement with option to purchase for a site and/or plans pursuant to Regulation 1865.32 without construction, even though such items may constitute only a part of the project as approved by the board. A lease–purchase agreement or agreements may be subsequently entered into by the executive officer for the balance of the project.

Article 9. Environmental Impact Requirements

§ 1865.80. CEQA Requirements.

These requirements are set forth in the following sections of Title 14, of the California Administrative Code.

SECTION NUMBERS

15001–15007	15231
15020–15021	15233
15041–15045	15261–15262
15050	15269
15052	15274
15060–15065	15300
15070–15074	15300.2
15080–15096	15300.4
15100–15112	15302
15120–15132	15314
15140–15153	15350–15368
15162–15170	15370–15376
15201–15205	15378–15385
15207–15227	

NOTE: Authority cited: Sections 21001, 21082, 21083 and 21087, Public Resources Code. Reference: Sections 21082, 21083 and 21087, Public Resources Code.

HISTORY

1. Repealer of former Article 9 (Sections 1865.80–1865.95) and new Article 9 (Sections 1865.80) filed 11–14–86; effective thirtieth day thereafter (Register 86, No. 46). For history of former Article, see Register 78, No. 5.

§ 1865.81. Definitions.

HISTORY

1. Repealer filed 11–14–86; effective thirtieth day thereafter (Register 86, No. 46).

§ 1865.82. CEQA Officer.

HISTORY

1. Repealer filed 11–14–86; effective thirtieth day thereafter (Register 86, No. 46).

§ 1865.83. Applicability of These Rules.

HISTORY

1. Repealer filed 11–14–86; effective thirtieth day thereafter (Register 86, No. 46).

§ 1865.84. Applicability of CEQA and Guidelines.

HISTORY

1. Repealer filed 11–14–86; effective thirtieth day thereafter (Register 86, No. 46).

§ 1865.85. Required Filing by a District.

HISTORY

1. Repealer filed 11–14–86; effective thirtieth day thereafter (Register 86, No. 46).

§ 1865.86. Categorical Exemptions.

HISTORY

1. Repealer filed 11–14–86; effective thirtieth day thereafter (Register 86, No. 46).

§ 1865.87. Notice of Exemption—Rejection by Executive Officer.

HISTORY

1. Repealer filed 11–14–86; effective thirtieth day thereafter (Register 86, No. 46).

§ 1865.88. Non–Exempt Projects—Initial Study.

HISTORY

1. Repealer filed 11–14–86; effective thirtieth day thereafter (Register 86, No. 46).

§ 1865.89. Negative Declaration—Requirements and Attachments.

HISTORY

1. Repealer filed 11–14–86; effective thirtieth day thereafter (Register 86, No. 46).

§ 1865.90. Negative Declaration—Rejection by Executive Officer If Not in Conformity with Law.

HISTORY

1. Repealer filed 11–14–86; effective thirtieth day thereafter (Register 86, No. 46).

§ 1865.91. EIR—General Requirements.

HISTORY

1. Repealer filed 11–14–86; effective thirtieth day thereafter (Register 86, No. 46).

§ 1865.92. EIR Attachments.

HISTORY

1. Repealer filed 11–14–86; effective thirtieth day thereafter (Register 86, No. 46).

§ 1865.93. EIR for More Than One Project.

HISTORY

1. Repealer filed 11–14–86; effective thirtieth day thereafter (Register 86, No. 46).

§ 1865.94. EIR—Rejection by Executive Officer for Non–Conformity with Law.

HISTORY

1. Repealer filed 11–14–86; effective thirtieth day thereafter (Register 86, No. 46).

§ 1865.95. *EIR Evaluation* by the Board.

HISTORY

1. Repealer filed 11–14–86; effective thirtieth day thereafter (Register 86, No. 46).

Subgroup 12. State School Deferred Maintenance

Article 1. Definitions

§ 1866. Definitions.

(a) In connection with the administration of the provisions of California Education Code (EC) Sections 17582 through 17588 and 17591 through 17592.5, inclusive, of Article 1, Chapter 5, Part 10.5, Division 1, Title 1, and for the purpose of these regulations, the terms set forth below shall have the following meanings:

"The Act" means EC Sections 17582 through 17588 and 17591 through 17592.5, above.

"Board" means the State Allocation Board.

"Complete Application" means a district has submitted with the application, all documents to the Office of Public School Construction (OPSC) that are required as identified in the General Information Section of the Form SAB 40–22 and the OPSC has accepted and completed a preliminary approval review.

"Critical Project" shall have the meaning set forth in Section 1866.5.

"Deferred Maintenance" means the repair or replacement work performed on school facility components that is not performed on an annual or on–going basis but planned for the future and part of the Form SAB 40–20.

"District or Applicant School District" shall mean an entity identified in Section 1866.1(a).

"Division of the State Architect" means the State office within the Department of General Services that reviews school building plans and specifications for structural, fire safety, and access compliance.

"Extreme Hardship Grant" means a grant provided by the State to complete the critical project, as provided by EC Section 17587 and Regulation Section 1866.5.2.

"Financial Test" shall have the meaning set forth in Section 1866.5(a).

"Five Year Plan" Shall have the meaning set forth in Section 1866.4.

"Form SAB 40–20" means the *Five Year Plan*, Form SAB 40–20 (Rev. 01/05), which is incorporated by reference.

"Form SAB 40–21" means the *Certification Of Deposits*, Form SAB 40–21 (Rev. 02/05), which is incorporated by reference.

"Form SAB 40–22" means the *Extreme Hardship Funding Application,* Form SAB 40–22 (Rev. 10/07), which is incorporated by reference.

"Form SAB 40–23" means the *Fund Release Authorization,* Form SAB 40–23 (New 04/02), which is incorporated by reference.

"Form SAB 40–24" means the *Expenditure Report,* Form SAB 40–24 (New 04/02), which is incorporated by reference.

"Like–Kind Material/System" means a building material or system that is substantially identical in function to the existing building material or system to be replaced.

"Matching Funds" means an amount of funds the district deposits into the "district deferred maintenance fund" to receive either a maximum or prorated basic grant.

"Maximum Basic Grant" means an amount of State funds apportioned by the Board for purposes of the Form SAB 40–20. This amount is based on the formula specified in EC Section 17584(a).

"Prorated Basic Grant" means the prorated amount of the maximum basic grant apportioned by the Board due to insufficient funding for the Deferred Maintenance Program (DMP).

"Office of Public School Construction (OPSC)" means the State office within the Department of General Services that assists the Board as necessary and administers the DMP.

"OPSC Deferred Maintenance Extreme Hardship Workload List" means a list of extreme hardship funding applications authorized by EC Section 17587 for which the district has submitted all necessary application documents to the OPSC that are required to be submitted as identified in the General Information Section of the Form SAB 40–22 but not yet included on the DMP Extreme Hardship Unfunded List.

"OPSC Extreme Hardship Unfunded List" means an information list of unfunded critical projects awaiting an Extreme Hardship Grant under the provisions of the DMP.

"OPSC Modernization Workload List" means a list of School Facility Program (SFP) modernization projects for which the district has submitted all necessary application documents to the OPSC that are required to be submitted as identified in the General Information Section of Form SAB 50–01, *Enrollment Certification/Projection*, (Revised 03/05); Form SAB 50–02, *Existing School Building Capacity*, (Revised 09/02); Form SAB 50–03, *Eligibility Determination*, (Revised 09/06); and Form SAB 50–04, *Application for Funding*, as specified in Section 1859.2 "Form SAB 50–04," under the SFP.

"Repair" means the work necessary to restore deteriorated or damaged building systems such as plumbing, heating, air conditioning, electrical, roofing, flooring, and wall systems. The exterior and interior painting of school buildings, asphalt paving, the inspection, sampling and analysis of building materials to determine the presence of asbestos–containing materials, the encapsulation or removal of asbestos–containing materials, the inspection, identification, sampling, and analysis of building materials to determine the presence of lead–containing materials, the control, management, and removal of lead–containing materials, or such other items as may be approved by the Board, to such condition that the school buildings may be effectively utilized for their designated purposes.

"Replacement" means the work necessary to replace those school building systems itemized in "Repair" above, which are either worn out or obsolete to the extent that they no longer effectively perform their functions.

"Routine Maintenance" means the school facility component work performed on an annual or on–going basis each year to keep building facilities in proper operating condition.

"School Facility Program (SFP)" means the Leroy F. Greene School Facilities Act of 1998.

"SFP Modernization Unfunded List" means an information list of unfunded modernization projects approved under the provisions of the SFP.

"Total Estimated Cost" means an estimated cost of the critical project on which the extreme hardship grant is calculated.

NOTE: Authority cited: Section 15503, Government Code. Reference: Sections 17582–17592.5, Education Code.

HISTORY

1. New Subgroup 12 (Articles 1–6, Sections 1866–1866.10) filed 4–18–80 as an emergency; effective upon filing (Register 80, No. 16). A Certificate o Compliance must be transmitted to OAH within 120 days or emergency language will be repealed 8–17–80.
2. Certificate of Compliance filed 6–26–80 (Register 80, No. 26).
3. New subsection (a)(10) filed 4–30–81; effective thirtieth day thereafter (Register 81, No. 18).
4. Amendment of subsection (a)(10) filed 2–27–86; effective thirtieth day thereafter (Register 86, No. 9).
5. Amendment of subsection (a)(7) and (8) filed 12–15–86; effective thirtieth day thereafter (Register 86, No. 52)
6. Amendment of section and NOTE filed 1–13–2003; operative 1–13–2003 pursuant to Government Code section 11343.4 (Register 2003, No. 3).
7. Amendment of definitions of "Deferred Maintenance," "Maximum Basic Grant," "OPSC Modernization Workload List" and "Repair" and new definition of "Like–Kind Material/System" filed 11–24–2004; operative 11–24–2004 pursuant to Government Code section 11343.4 (Register 2004, No. 48).
8. Amendment filed 2–28–2005; operative 2–28–2005 pursuant to Government Code section 11343.4 (Register 2005, No. 9).
9. Amendment of definitions of "Deferred Maintenance," "Form SAB 40–20," "Maximum Basic Grant" and "OPSC Modernization Workload List" filed 5–26–2005 as an emergency; operative 5–26–2005 (Register 2005, No. 21). A Certificate of Compliance must be transmitted to OAL by 9–23–2005 or emergency language will be repealed by operation of law on the following day.
10. Amendment of definition of "OPSC Modernization Workload List" filed 10–27–2005; operative 10–27–2005 pursuant to Government Code section 11343.4 (Register 2005, No. 43).
11. Certificate of Compliance as to 5–26–2005 order transmitted to OAL 9–19–2005 and filed 10–31–2005 (Register 2005, No. 44).
12. Change without regulatory effect amending definition of "OPSC Modernization Workload List" filed 8–11–2006 pursuant to section 100, title 1, California Code of Regulations (Register 2006, No. 32).
13. Amendment of definition of "OPSC Modernization Workload List" filed 2–16–2007; operative 2–16–2007 (Register 2007, No. 7).
14. Amendment of *Application for Funding* (incorporated by reference) and amendment of definition of "OPSC Modernization Workload List" filed 4–25–2007; operative 4–25–2007 pursuant to Government Code section 11343.4 (Register 2007, No. 17).
15. Amendment of definition of "OPSC Modernization Workload List" filed 5–17–2007; operative 5–17–2007 pursuant to Government Code section 11343.4 (Register 2007, No. 20).
16. Amendment of definition of "OPSC Modernization Workload List" filed 7–18–2007; operative 7–18–2007 pursuant to Government Code section 11343.4 (Register 2007, No. 29).
17. Amendment of definition of "OPSC Modernization Workload List" filed 8–31–2007; operative 8–31–2007 pursuant to Government Code section 11343.4 (Register 2007, No. 35).
18. Amendment of definitions of "Form SAB 40–22" and "OPSC Modernization Workload List" filed 4–10–2008; operative 4–10–2008 pursuant to Government Code section 11343.4 (Register 2008, No. 15).
19. Amendment of definition of "OSPC Modernization Workload List" filed 4–30–2008; operative 4–30–2008 pursuant to Government Code section 11343.4 (Register 2008, No. 18).

Article 2. Eligibility to Receive DMP Grants

§ 1866.1. Prerequisites to Receiving a Basic or Extreme Hardship Grant.

The prerequisites to receiving a grant, as provided by the Act and these regulations, include the following:

(a) Operate as one of the following:

(1) A public elementary, unified, or high school district that serves any combination of kindergarten through twelfth grade pupils; or

(2) A County Superintendent of Schools (CSS) that serves any combination of kindergarten through twelfth grade pupils; or

(3) A regional occupational center identified in EC Section 17592.5; and

(b) That the governing board of an applicant school district has established a restricted fund to be known as the "district deferred maintenance fund" for the specific purposes as specified in EC Section 17582(a) and these regulations; and

(c) That the applicant school district has a Board approved Form SAB 40–20 complying with Section 1866.4, which includes the fiscal year of funding.

NOTE: Authority cited: Section 15503, Government Code. Reference: Sections 17582, 17584, 17587, 17591 and 17592.5, Education Code.

HISTORY

1. Amendment of article heading, section heading, section and NOTE filed 1–13–2003; operative 1–13–2003 pursuant to Government Code section 11343.4 (Register 2003, No. 3).
2. Amendment of subsection (c) filed 11–24–2004; operative 11–24–2004 pursuant to Government Code section 11343.4 (Register 2004, No. 48).
3. Amendment of subsection (c) filed 2–28–2005; operative 2–28–2005 pursuant to Government Code section 11343.4 (Register 2005, No. 9).

Article 3. DMP Application Procedure

§ 1866.2. DMP Application for Basic Grant.

An eligible district seeking funding for a DMP Basic Grant shall complete and file with the OPSC the Form SAB 40–20.

NOTE: Authority cited: Section 15503, Government Code. Reference: Section 17591, Education Code.

HISTORY

1. Amendment of article heading, section heading and section and new NOTE filed 1–13–2003; operative 1–13–2003 pursuant to Government Code section 11343.4 (Register 2003, No. 3).
2. Amendment filed 11–24–2004; operative 11–24–2004 pursuant to Government Code section 11343.4 (Register 2004, No. 48).
3. Amendment filed 2–28–2005; operative 2–28–2005 pursuant to Government Code section 11343.4 (Register 2005, No. 9).

§ 1866.3. DMP Application for Extreme Hardship Grant.

An eligible district seeking funding for a DMP extreme hardship grant shall complete and file with the OPSC the Form SAB 40–22.

NOTE: Authority cited: Section 15503, Government Code. Reference: Section 17587, Education Code.

HISTORY

1. Amendment filed 4–30–81; effective thirtieth day thereafter (Register 81, No. 18).
2. Amendment filed 7–28–82; effective thirtieth day thereafter (Register 82, No. 31).
3. Amendment of section heading, section and NOTE filed 1–13–2003; operative 1–13–2003 pursuant to Government Code section 11343.4 (Register 2003, No. 3).

[The next page is 257.]

4. Amendment filed 2–28–2005; operative 2–28–2005 pursuant to Government Code section 11343.4 (Register 2005, No. 9).

Article 4. Basic Grant Request and Apportionment

§ 1866.4. Five Year Plan Requirements.

EC Section 17591 establishes the need of filing with the Board a five year plan for deferred maintenance needs of the district. The Form SAB 40–20, is a summary of proposed projects the district plans on completing annually over the next five fiscal years using the basic grant. The fiscal year the plan commences is determined by the fiscal year in which it was filed. New and revised plans are accepted on a continuous basis for the current fiscal year up to the last working day in June. Revisions are not accepted for prior fiscal years.

(a) Under the following circumstances, a revised plan would need to be submitted to the OPSC:

(1) The plan has expired.

(2) Work will be performed that is not listed on the plan or at a school not listed on the plan.

(3) If work listed on the plan was performed using an SFP modernization, CSFP Rehabilitation (as defined in SFP Regulation Section 1859.2) or Federal Renovation Program (FRP) grant, pursuant to Section 1866.13.

(b) A district submitting a new plan or revising a plan under (a) above must be able to certify that the plans and proposals for expenditures of funds, listed on the Form SAB 40–20 submitted to the OPSC, were discussed at a public hearing at a regularly scheduled meeting with the district's governing board, pursuant to EC Section 17584.1(a).

NOTE: Authority cited: Section 15503, Government Code. Reference: Sections 17582, 17584.1 and 17591, Education Code.

HISTORY

1. Amendment of article heading, section heading, section and NOTE filed 1–13–2003 pursuant to Government Code section 11343.4 (Register 2003, No. 3).
2. Amendment of first paragraph and subsection (b) filed 11–24–2004; operative 11–24–2004 pursuant to Government Code section 11343.4 (Register 2004, No. 48).
3. Amendment of first paragraph and subsection (b) filed 2–28–2005; operative 2–28–2005 pursuant to Government Code section 11343.4 (Register 2005, No. 9).
4. Amendment of subsection (a)(3) filed 5–17–2007; operative 5–17–2007 pursuant to Government Code section 11343.4 (Register 2007, No. 20).

§ 1866.4.1. Permissible Use of the DMP Basic Grant.

The district may include on its Form SAB 40–20 a repair or replacement project, provided it meets all the following criteria:

(a) Conforms to the deferred maintenance activities authorized in EC Section 17582(a) or these regulations, which has approached or exceeded its normal life expectancy or has a history of continued repairs indicating a shortened life expectancy, and;

(b) Performed at a district owned facility, which is used for school purposes. A district that is currently leasing relocatables from the State Relocatable Classroom Program may include deferred maintenance work on the Form SAB 40–20 for these facilities.

(c) Facilities owned by a CSS or leased facilities that are required to be maintained by the CSS, which it is authorized to use pursuant to Article 3 commencing with EC Section 17280, Chapter 3, may be included on the Form SAB 40–20.

NOTE: Authority cited: Section 15503, Government Code. Reference: Sections 17280, 17582 and 17591, Education Code.

HISTORY

1. New section filed 1–13–2003; operative 1–13–2003 pursuant to Government Code section 11343.4 (Register 2003, No. 3).
2. Amendment of first paragraph and subsections (b) and (c) filed 11–24–2004; operative 11–24–2004 pursuant to Government Code section 11343.4 (Register 2004, No. 48).
3. Amendment filed 2–28–2005; operative 2–28–2005 pursuant to Government Code section 11343.4 (Register 2005, No. 9).

§ 1866.4.2. Calculation of Basic Grant and Apportionment of Basic Grant.

After December 1 each year, the Board shall apportion to districts a DMP basic grant for the preceding fiscal year. A maximum basic grant is calculated as stated for each of the following:

(a) School districts and regional occupational centers using the formula set forth in EC Section 17584(a).

(b) CSSs who meet the provisions of EC Sections 17584, 17591 and, if applicable, 17585, an amount equal to one dollar ($1.00) for each one dollar ($1.00) of local funds up to a maximum of one–half percent of the total general funds and adult education funds budgeted by the CSSs for the fiscal year, exclusive of any amounts budgeted for capital outlay, debt service or revenues that are passed through to other local educational agencies, to the extent of funds legally available pursuant to EC Section 17080.

If sufficient State funding is not available, the Board shall apportion to all districts except those that are receiving a basic grant with an extreme hardship grant, a prorated amount of the maximum. This amount is known as the prorated basic grant.

A district's unresolved complaints, pursuant to EC Section 35292.5, will be presented to the Board prior to the annual basic grant apportionment for the fiscal year in which the complaint was filed. If the Board determines that a violation of EC Section 35292.5 has occurred, the district will receive a 30 day notice to correct the violation. Districts that do not correct the violation within 30 days of the date of the written notice shall be deemed ineligible for the basic grant and the funds may be distributed to other eligible districts.

NOTE: Authority cited: Section 15503, Government Code. Reference: Sections 2553 and 17584, Education Code.

HISTORY

1. New section filed 1–13–2003; operative 1–13–2003 pursuant to Government Code section 11343.4 (Register 2003, No. 3).
2. Amendment of subsection (a) filed 11–24–2004; operative 11–24–2004 pursuant to Government Code section 11343.4 (Register 2004, No. 48).
3. Amendment of first paragraph and new final paragraph filed 2–28–2005; operative 2–28–2005 pursuant to Government Code section 11343.4 (Register 2005, No. 9).

§ 1866.4.3. District Deposit of Matching Share.

To receive the basic grant pursuant to Section 1866.4.2, districts are required to deposit a matching share into their District Deferred Maintenance Fund established pursuant to EC Section 17582(a). The State will match this amount dollar–for–dollar not to exceed the basic grant apportioned by the Board. The district's deposit must be a cash contribution from unmatched carryover pursuant to Section 1866.4.4, or from the district's restricted Ongoing and Major Maintenance Account, or from any source not otherwise prohibited by law or regulation.

If the district has established an Ongoing and Major Maintenance Account under the provisions of EC Section 17070.75(b)(1), any annual deposits in excess of 2 1/2 percent into that fund may be used towards the district's matching share. Districts may either:

(a) Report the excess amount in the Ongoing and Major Maintenance Account being used towards the match on the Form SAB 40–21. These funds are not available for eligible deferred maintenance projects listed on the Form SAB 40–20, until transferred into the District Deferred Maintenance Fund.

(b) Transfer the excess funds from the Ongoing and Major Maintenance Account to the District Deferred Maintenance Fund and report the total dollar matching share on the Form SAB 40–21. These funds are available to the district to perform work on the Form SAB 40–20.

NOTE: Authority cited: Section 15503, Government Code Reference: Sections 17070.75, 17582 and 17584, Education Code.

HISTORY

1. New section filed 1–13–2003; operative 1–13–2003 pursuant to Government Code section 11343.4 (Register 2003, No. 3).
2. Amendment of subsections (a) and (b) filed 11–24–2004; operative 11–24–2004 pursuant to Government Code section 11343.4 (Register 2004, No. 48).

3. Amendment of subsections (a) and (b) filed 2–28–2005; operative 2–28–2005 pursuant to Government Code section 11343.4 (Register 2005, No. 9).
4. Amendment of first paragraph filed 4–10–2008; operative 4–10–2008 pursuant to Government Code section 11343.4 (Register 2008, No. 15).

§ 1866.4.4. Carryover of Unmatched State Funds.

Any funds deposited and not matched by the State can be carried over to the next fiscal year. A district can apply unexpended, unmatched balances past the next fiscal year under the provisions of EC Section 17583, and then reaffirm by specific action of the district's governing board the encumbrance of such funds for deferred maintenance purposes.

Carryover that has been reported on the Form SAB 40–21 is considered matched and therefore cannot be applied as carryover in subsequent fiscal years.

NOTE: Authority cited: Section 15503, Government Code. Reference: Sections 17582 and 17583, Education Code.

HISTORY

1. New section filed 1–13–2003; operative 1–13–2003 pursuant to Government Code section 11343.4 (Register 2003, No. 3).
2. Amendment of second paragraph filed 2–28–2005; operative 2–28–2005 pursuant to Government Code section 11343.4 (Register 2005, No. 9).

§ 1866.4.5. County Superintendents of Schools Funding Limitations.

NOTE: Authority cited: Section 15503, Government Code. Reference: Sections 2553, 39618–39619.2 and 39620, Education Code; and Sections 15502–15503, Government Code.

HISTORY

1. New section filed 9–8–89 as an emergency; operative 9–8–89 (Register 89, No. 37). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 1–8–90.
2. Certificate of Compliance including amendment transmitted to OAL 12–1–89 and filed 12–29–89 (Register 90, No. 2).
3. Repealer of article 4.5 heading and repealer of section filed 1–13–2003; operative 1–13–2003 pursuant to Government Code section 11343.4 (Register 2003, No. 3).

§ 1866.4.6. Release of State Funds.

The CSSs shall report the district's deposit on the Form SAB 40–21. The Form is due to the OPSC no later than 60 days after the maximum or prorated basic grant is apportioned by the Board. Any Form SAB 40–21 received after 60 days will be brought to the Board on a case–by–case basis to determine if the funds will be released.

NOTE: Authority cited: Section 15503, Government Code. Reference: Section 17584, Education Code.

HISTORY

1. New section filed 1–13–2003; operative 1–13–2003 pursuant to Government Code section 11343.4 (Register 2003, No. 3).
2. Amendment filed 2–28–2005; operative 2–28–2005 pursuant to Government Code section 11343.4 (Register 2005, No. 9).

§ 1866.4.7. Failure to Deposit Matching Funds.

A total deposit less than the maximum amount will require the district to comply with the reporting requirements of EC Section 17584.1. The OPSC will present to the Board in March reports received annually and request that any unmatched apportionments be adjusted to reflect actual amount of funds deposited.

NOTE: Authority cited: Section 15503, Government Code. Reference: Sections 17584 and 17584.1, Education Code.

HISTORY

1. New section filed 1–13–2003; operative 1–13–2003 pursuant to Government Code section 11343.4 (Register 2003, No. 3).

Article 5. Extreme Hardship Grant Application and Apportionment

§ 1866.5. Eligibility Requirements.

(a) A district may be eligible for an extreme hardship grant, provided the district demonstrates to the Board that there is a critical project on the Form SAB 40–20, which meets all the following criteria:

(1) Financial Test

The total estimated cost of the critical project is greater than two times the district's maximum basic grant.

(2) Health and Safety Test

The project if not completed in one year could result in serious damage to the remainder of the facility or would result in a serious hazard to the health and safety of the pupils attending the facility.

(b) An extreme hardship grant is available to Repair or replace an existing school building component, authorized by EC Section 17582 or these regulations, located within existing district owned classrooms and/or subsidiary facilities (corridors, toilets, kitchens and other non–classroom space located on a school site), if the district can demonstrate to the satisfaction of the Board that the health and safety of the pupils is at risk. Replacement of a school facility component shall be limited to the use of a Like–Kind Material/System except in the following circumstances and with the concurrence of the OPSC:

(1) the work in the project proposes to use an alternative building material or system that performs the same function as a no longer available building material or system, or

(2) the work in the project proposes to use an alternative building material or system that performs the same function as a building material or system which is uneconomical to replace, or

(3) the work in the project proposes to use an alternative building material or system which is requested by the district and is less costly than a Like–Kind Material/System Replacement.

NOTE: Authority cited: Section 15503, Government Code. Reference: Sections 17582, 17587 and 17588, Education Code.

HISTORY

1. Amendment filed 4–20–87; operative 5–20–87 (Register 87, No. 17).
2. Amendment of article and section headings, repealer and new section and amendment of NOTE filed 1–13–2003; operative 1–13–2003 pursuant to Government Code section 11343.4 (Register 2003, No. 3).
3. Amendment filed 11–24–2004; operative 11–24–2004 pursuant to Government Code section 11343.4 (Register 2004, No. 48).
4. Amendment of subsection (a) filed 2–28–2005; operative 2–28–2005 pursuant to Government Code section 11343.4 (Register 2005, No. 9).

§ 1866.5.1. Application Submittals.

(a) For the OPSC to deem an application complete, a district requesting an extreme hardship grant shall submit to the OPSC the Form SAB 40–22, along with all documents requested in the General Information Section of the Form. Additional documentation identifying how the request meets the requirements of EC Section 17587 may be required.

(b) More than one Form SAB 40–22 may be submitted by a district in a fiscal year provided each project meets the eligibility requirements set forth in Section 1866.5. The OPSC will present projects to the Board in the order of date received. Complete applications are accepted on a continuous basis; those received prior to the last working day in June are ensured consideration for funding by the Board in the next funding cycle.

(c) The district shall submit a detailed cost estimate supporting the construction costs and any justification documents that will support the work with the Form SAB 40–22. If the extreme hardship grant request contains work on relocatable facilities, a cost/benefit analysis must be prepared by the district and submitted to the OPSC that indicates the total cost to remain and mitigate the problem is less than 50 percent of the current replacement cost of the facility. The Board will approve reasonable and appropriate funds to mitigate the conditions, which makes the project qualify as a hardship under EC Section 17587, if the costs are consistent with the Saylor Current Construction Costs.

(d) If the work detailed in the cost estimate is for other than a Like–Kind Material/System Replacement the district may be required to submit substantiating evidence to the OPSC demonstrating that the alternative material or system meets the requirements of Section 1866.5(b)(1), (2), or (3). All costs of work in the project which exceed the cost of a Like–Kind Material/System Replacement or when appropriate, the cost of an acceptable alternative material or system replacement, shall be paid by the district.

NOTE: Authority cited: Section 15503, Government Code. Reference: Section 17587, Education Code.

HISTORY

1. New section filed 12–4–86; effective thirtieth day thereafter (Register 86, No. 49).
2. Amendment of subsection (a) filed 11–5–87; operative 12–5–87 (Register 87, No. 46).
3. Renumbering of former section 1866.5.1 to section 1866.5.3 and new section 1866.5.1 filed 1–13–2003; operative 1–13–2003 pursuant to Government Code section 11343.4 (Register 2003, No. 3).
4. New subsection (d) filed 11–24–2004; operative 11–24–2004 pursuant to Government Code section 11343.4 (Register 2004, No. 48).
5. Amendment of subsections (a)–(c) filed 2–28–2005; operative 2–28–2005 pursuant to Government Code section 11343.4 (Register 2005, No. 9).

§ 1866.5.2. Determination of Extreme Hardship Grant Amount and District Contribution.

(a) An extreme hardship grant for the first critical project in any given fiscal year for a district with a maximum Basic Grant and State matching share that is less than $1,000,000, shall be determined by either of the following:

(1) For a total project cost that is less than $1,000,000, the extreme hardship grant will be determined by taking the total project cost less the district's maximum basic grant, less the State's matching share.

(2) For a total project cost that exceeds $1,000,000, the extreme hardship grant will be determined by taking $1,000,000 less the district's maximum basic grant, less the State's matching share. The total of that amount plus 50 percent of any project costs above $1,000,000 will be the State's hardship contribution. The district's contribution will be 50 percent of the remaining excess above $1,000,000 and the district's maximum basic grant.

(b) An extreme hardship grant for the first critical project in any given fiscal year for a district with a maximum basic grant and State matching share that exceeds $1,000,000, shall be determined by the following:

(1) From the total project cost deduct the district's maximum Basic Grant and State matching share. The remaining amount will be divided in half between the district and the State.

The district shall be required to contribute the maximum basic grant and State's matching share at the time the Board apportions funding for the project.

(c) An extreme hardship grant for each additional hardship project beyond one in any given fiscal year shall be determined by dividing the total project cost in half. A cash contribution of 50 percent will be required from the district.

(d) A district with only one school may include other major repair or replacement work deemed essential for basic utilization and functioning of the school, without being subject to subsection (c).

If a district receives an unfunded approval pursuant to Section 1866.5.3, the extreme hardship grant will be an estimate based on the current maximum basic grant and state matching share and will be re–calculated using the maximum basic grant and state matching share at the time of funding by the Board.

NOTE: Authority cited: Section 15503, Government Code; and Section 17588, Education Code. Reference: Sections 17587 and 17588, Education Code.

HISTORY

1. New section filed 1–13–2003; operative 1–13–2003 pursuant to Government Code section 11343.4 (Register 2003, No. 3).

§ 1866.5.3. Project Priorities Due to Insufficient State Funds.

(a) When funds are not available, project requests that meet the criteria for funding are presented to the Board on a continuous basis throughout the fiscal year and are included on an unfunded list based on the date the complete critical hardship application was received by the OPSC.

(b) The Board shall utilize the following prioritized list to apportion extreme hardship grants for critical projects when funds become available:

Priority Description	*Priority No.*
A project that meets the requirements of (c) below.	1
All other eligible projects as defined in EC Section 17582(a) or these regulations.	2

(c) At the time the complete application is filed with the OPSC, a district requesting Priority One status shall submit a resolution passed by the district's governing board that includes the following:

(1) Describe in detail the health and safety or structural problems present that preclude the pupils from remaining in the facility and the proposed action by the district's governing board.

(2) Identify the facility or facilities on the school site that will be affected by the closure and the dates of closure.

(3) Identify how the board plans on housing the pupils until the facility can be re–opened.

An assessment will be made by the OPSC and the Board to determine if the critical project meets the Priority One requirements.

(d) When funds become available, the requests included on the OPSC Extreme Hardship Unfunded List will receive funding in the following order, provided the project still meets Section 1866.5(a):

(1) Increases, if the original request has already received an apportionment.

(2) Priority One Projects.

(3) All other eligible projects as defined in EC Section 17582(a) or these regulations.

Within each category, projects will be funded in the order the project was placed on the unfunded list. Projects that do not receive funding will remain on the unfunded list for a future funding cycle.

(e) The Board may make exceptions to the priorities on a case–by–case basis for the benefit of the pupils affected.

(f) The Board shall maintain a sufficient reserve for unexpected emergencies and on–going cost increases.

NOTE: Authority cited: Section 15503, Government Code. Reference: Sections 17587 and 17588, Education Code.

HISTORY

1. Renumbering of former section 1866.5.1 to section 1866.5.3, including amendment of section heading, section and NOTE filed 1–13–2003; operative 1–13–2003 pursuant to Government Code section 11343.4 (Register 2003, No. 3).

§ 1866.5.4. Reimbursement.

(a) Reimbursement of eligible architect/engineering expenditures will be allowed up to five months prior to the date that the hardship project is accepted for processing by the OPSC.

(b) After written determination by the OPSC that the project is approvable, reimbursement of eligible construction expenditures will be allowed. If a district incurs construction costs prior to that date, all construction expenditures for the project will not be reimbursed.

(c) In the case where a project meets the criteria of priority one hardship pursuant to Section 1866.5.3(c), districts can contact the OPSC to request an expedited determination of the eligibility of the hardship project. The OPSC will respond within five working days. If OPSC does not respond within five working days, the project will be deemed approvable for eligible construction expenditures.

NOTE: Authority cited: Section 15503, Government Code. Reference: Section 17587, Education Code.

HISTORY

1. New section filed 1–13–2003; operative 1–13–2003 pursuant to Government Code section 11343.4 (Register 2003, No. 3).

§ 1866.5.5. Permissible Uses of Extreme Hardship Grant Funds.

The extreme hardship grant shall be used for the critical project approved by the Board and only expenditures relating to the minimum work necessary to mitigate the problem shall be recognized as eligible project costs. Architect or engineer's fees up to 12 percent of the construction costs will be deemed eligible as well as reasonable testing, inspection, and plan checking fees. The grant may not be used for any of the following:

(a) Construction costs incurred prior to the OPSC determining that the project is approvable, except for costs associated with temporary measures necessary to immediately mitigate the problem.

(b) Expenditures required by local mandate that are not prescribed in State law.

(c) Asbestos abatement, sampling, testing necessary as a result of a SFP modernization project or a Federal Renovation Program project.

(d) Non–owned facilities.

NOTE: Authority cited: Section 15503, Government Code. Reference: Section 17587, Education Code.

HISTORY

1. New section filed 1–13–2003; operative 1–13–2003 pursuant to Government Code section 11343.4 (Register 2003, No. 3).

§ 1866.5.6. Ongoing Project Cost Increase.

A district may request an increase in funding for ongoing project costs under either one of the following conditions:

(a) The additional construction costs are a result of the lowest bidder exceeding the cost of the work approved by the Board for the extreme hardship grant. The OPSC may request that the project be re–bid prior to processing the increase for funding.

(b) Additional related work is encountered within the scope of the work originally approved by the Board for the extreme hardship grant.

Any Board approved increase to the extreme hardship grant will be subject to the requirements of Section 1866.5.2.

NOTE: Authority cited: Section 15503, Government Code. Reference: Sections 17587 and 17588, Education Code.

HISTORY

1. New section filed 1–13–2003; operative 1–13–2003 pursuant to Government Code section 11343.4 (Register 2003, No. 3).

§ 1866.5.7. Release of State Funds.

The OPSC will release State funds that have been apportioned by the Board to the district after submittal by the district of the Form SAB 40–23, and supporting documentation requested in the General Instruction Section of the form. A district must submit the Form SAB 40–23 within one year of the apportionment of the extreme hardship grant for the project. After reviewing the submittal, the OPSC may request to the Board, based on the supporting documentation, that the extreme hardship grant be adjusted to reflect the actual project costs.

Should the district only provide documentation to support the release of funding for a portion of the project, the OPSC shall prorate the fund release based on the supporting documentation.

NOTE: Authority cited: Section 15503, Government Code. Reference: Section 17587, Education Code.

HISTORY

1. New section filed 1–13–2003; operative 1–13–2003 pursuant to Government Code section 11343.4 (Register 2003, No. 3).
2. Amendment of first paragraph filed 2–28–2005; operative 2–28–2005 pursuant to Government Code section 11343.4 (Register 2005, No. 9).

§ 1866.5.8. Progress Report and Time Limit on Extreme Hardship Grant Apportionment.

Within one year of the extreme hardship grant apportionment by the Board the district shall:

(a) Complete the critical project; and

(b) Submit the Form SAB 40–23 and supporting documentation pursuant to Section 1866.5.7.

(c) If (b) above has not been met within six months of Board apportionment, the district is required to submit a progress report in the form of a narrative to the OPSC. The report shall contain a timeline of the project showing the progress that has been made and how the district plans on completing the project by the one year deadline. Should the district not meet the one year deadline, the entire extreme hardship grant shall be presented to the Board for rescission and, if applicable, the portion of the Basic Grant the district received due to the extreme hardship grant funding unless the district submits a request for time extension.

(d) The Board may approve a time extension for the project based on the following:

(1) A provision for a six–month time extension if the district has completed the plans and they have been submitted to the DSA for approval.

(2) A provision for a six–month time extension when the plans are DSA approved and the project is currently out to bid.

(3) A provision for up to a nine–month time extension when the district can demonstrate to the Board that circumstances exists beyond the district's control.

NOTE: Authority cited: Section 15503, Government Code. Reference: Sections 17587 and 17588, Education Code.

HISTORY

1. New section filed 1–13–2003; operative 1–13–2003 pursuant to Government Code section 11343.4 (Register 2003, No. 3).
2. Amendment of subsection (b) filed 2–28–2005; operative 2–28–2005 pursuant to Government Code section 11343.4 (Register 2005, No. 9).

§ 1866.5.9. Exemptions to District Contribution.

Monitoring costs required by a public agency relating to the removal of an underground toxic tank that cannot be funded by any other source, shall be exempted from a project's total cost for the purpose of determining the district contribution as required in Section 1866.5.2(a)(2) or (b)(1).

NOTE: Authority cited: Section 15503, Government Code. Reference: Section 17587, Education Code.

HISTORY

1. New section filed 1–13–2003; operative 1–13–2003 pursuant to Government Code section 11343.4 (Register 2003, No. 3).

§ 1866.6. Method of Payment to School District.

NOTE: Authority cited: Section 15503, Government Code. Reference: Sections 39618–39621, Education Code.

HISTORY

1. Repealer filed 1–13–2003; operative 1–13–2003 pursuant to Government Code section 11343.4 (Register 2003, No. 3).

Article 6. Miscellaneous

§ 1866.7. Control of Expenditures.

EC Section 17582(c) provides that the governing board of each school district shall have complete control over the apportioned funds and the earnings of funds once deposited in the district deferred maintenance fund, provided that no funds deposited in the district deferred maintenance fund pursuant to EC Section 17584(a) may be expended by the governing board for any purpose except those specified in EC Section 17582(a).

NOTE: Authority cited: Section 15503, Government Code. Reference: Section 17582, Education Code.

HISTORY

1. Amendment of article heading, section and NOTE filed 1–13–2003; operative 1–13–2003 pursuant to Government Code section 11343.4 (Register 2003, No. 3).
2. Amendment filed 11–24–2004; operative 11–24–2004 pursuant to Government Code section 11343.4 (Register 2004, No. 48).

§ 1866.8. Expenditures by Districts Subject to Public Contract Code.

Any expenditures by a district from the proceeds of an apportionment made for the purposes set forth in EC Sections 17582 and 17587 must comply with all laws, specifically the Public Contract Code (PCC) and the California Code of Regulations (Title 24). An "emergency" contract must be awarded under the provisions of the PCC Section 20113.

NOTE: Authority cited: Section 15503, Government Code. Reference: Sections 17582, 17584 and 17587, Education Code.

HISTORY

1. Amendment of section heading, section and NOTE filed 1–13–2003; operative 1–13–2003 pursuant to Government Code section 11343.4 (Register 2003, No. 3).

§ 1866.9. Program Reporting Requirements.

A district receiving funds in accordance with Section 1866.5.2 shall submit an expenditure report from the district on the Form SAB 40–24. The expenditure report shall be due no later than two years from the date any funds were released.

NOTE: Authority cited: Section 15503, Government Code. Reference: Section 17587, Education Code.

HISTORY

1. Amendment of section heading, repealer and new section and amendment of NOTE filed 1–13–2003; operative 1–13–2003 pursuant to Government Code section 11343.4 (Register 2003, No. 3).
2. Amendment filed 2–28–2005; operative 2–28–2005 pursuant to Government Code section 11343.4 (Register 2005, No. 9).

§ 1866.9.1. Expenditure Audit.

When the district has received funds pursuant to Section 1866.5.2, the project will be audited to assure that the expenditures incurred by the district were made in accordance with the provisions of EC Sections 17582(a) and 17587, and Section 1866.5.5.

When the OPSC receives the final expenditure report from the district on the Form SAB 40–24, an audit of the expenditures by the OPSC shall commence within one year of the report for all extreme hardship grant apportionments made by the Board after these regulations become effective. The OPSC shall complete the audit within six months, unless additional information requested by the district has not been received.

The district shall be required to maintain all appropriate records that support all district certifications and expenditures for all costs associated with the extreme hardship grant for a period of not less than four years from the date the notice of completion is filed for the project in order to allow other agencies, including, without limitation, the Bureau of State Audits and the State Controller to perform their audit responsibilities.

NOTE: Authority cited: Section 15503, Government Code. Reference: Section 17587, Education Code.

HISTORY

1. New section filed 1–13–2003; operative 1–13–2003 pursuant to Government Code section 11343.4 (Register 2003, No. 3).
2. Amendment of first and second paragraphs filed 2–28–2005; operative 2–28–2005 pursuant to Government Code section 11343.4 (Register 2005, No. 9).

§ 1866.10. Limitation of State Responsibility.

In making an apportionment, neither the State nor any department or agency thereof, shall be required to assume any responsibility not otherwise imposed upon it by law.

NOTE: Authority cited: Section 15503, Government Code. Reference: Sections 17582–17592.5, Education Code.

HISTORY

1. Amendment of NOTE filed 1–13–2003; operative 1–13–2003 pursuant to Government Code section 11343.4 (Register 2003, No. 3).

§ 1866.11. Payment and Performance Bonds.

NOTE: Authority cited: Section 15503, Government Code. Reference: Sections 39618–39621, Education Code.

HISTORY

1. New section filed 6–26–80; effective thirtieth day thereafter (Register 80, No. 26). 2. Repealer filed 4–30–81; effective thirtieth day thereafter (Register 81, No. 18).
2. Repealer filed 4–30–81; effective thirtieth day thereafter (Register 81, No. 18).
3. Amendment of NOTE filed 1–13–2003; operative 1–13–2003 pursuant to Government Code section 11343.4 (Register 2003, No. 3).

§ 1866.12. Earned Interest on DMP Grants.

Earned interest on State funds received in accordance with the Act shall be treated as follows:

(a) One half of any interest earned on DMP grant funds provided pursuant to Section 1866.4.2 may be applied towards the district match in any given fiscal year.

(b) All interest earned on DMP grant funds provided pursuant to Section 1866.5 shall be applied to eligible project costs for the project pursuant to Section 1866.5.5 or returned to the State.

NOTE: Authority cited: Section 15503, Government Code. Reference: Sections 17582, 17584, and 17587, Education Code.

HISTORY

1. New section filed 1–13–2003; operative 1–13–2003 pursuant to Government Code section 11343.4 (Register 2003, No. 3).

§ 1866.13. Duplication of Applications.

If the district's application for an extreme hardship grant involves proposed work also included in a SFP modernization project currently included on the SFP Modernization Unfunded List or the OPSC Modernization Workload List or in a CSFP Rehabilitation project, the district must certify that, after reducing the work to be funded with the extreme hardship grant from the SFP modernization or CSFP Rehabilitation project, the cost estimate for the remaining work in the modernization or CSFP Rehabilitation project is at least 60 percent of the total SFP or CSFP grant amount provided by the state and the district's matching share. The cost estimate may not include planning, tests, inspection or furniture or equipment. If the district cannot make this certification, the SFP modernization or CSFP Rehabilitation project must be withdrawn prior to the release of any extreme hardship grants to the district.

If the district's application for FRP grants, SFP modernization grants, or CSFP Rehabilitation grants involves work currently included on the district's Form SAB 40–20, pursuant to Education Code Section 17591, the district must eliminate the projects that will be funded with the FRP grant, SFP modernization grants, or CSFP Rehabilitation grants from the Form prior to the release of any FRP grants, SFP modernization grants, or CSFP Rehabilitation grants to the district.

NOTE: Authority cited: Section 15503, Government Code. Reference: Sections 17582, 17587 and 17591, Education Code.

HISTORY

1. New section filed 1–13–2003; operative 1–13–2003 pursuant to Government Code section 11343.4 (Register 2003, No. 3).
2. Amendment of second paragraph filed 11–24–2004; operative 11–24–2004 pursuant to Government Code section 11343.4 (Register 2004, No. 48).
3. Amendment of second paragraph filed 2–28–2005; operative 2–28–2005 pursuant to Government Code section 11343.4 (Register 2005, No. 9).
4. Amendment of second paragraph filed 5–17–2007; operative 5–17–2007 pursuant to Government Code section 11343.4 (Register 2007, No. 20).
5. Amendment of first paragraph filed 4–10–2008; operative 4–10–2008 pursuant to Government Code section 11343.4 (Register 2008, No. 15).

§ 1866.14. Amending and Withdrawal of Extreme Hardship Funding Applications.

The district may not amend the Form SAB 40–22 submitted to the OPSC that has not received Board approval to increase the scope of work. At the option of the district, the funding application may be withdrawn and resubmitted to include the additional work. The district must request that the application be withdrawn and removed from the OPSC Deferred Maintenance Extreme Hardship Workload List. The resubmitted application will receive a new processing date by the OPSC.

NOTE: Authority cited: Section 15503, Government Code. Reference: Section 17587, Education Code.

HISTORY

1. New section filed 1–13–2003; operative 1–13–2003 pursuant to Government Code section 11343.4 (Register 2003, No. 3).
2. Amendment filed 2–28–2005; operative 2–28–2005 pursuant to Government Code section 11343.4 (Register 2005, No. 9).

Article 7. Asbestos Abatement

§ 1867.2. Matching Funds.

(a) The State Allocation Board will fund 50% of each eligible district's abatement projects. The state Allocation Board may increase the apportionment to a district, upon request, if the required district contribution shown below in excess of 1/2 of 1% of the district's budgeted General Fund and Adult Education Fund, less capital outlay and debt service.

A.D.A.	*Required District Contribution*
4,499 or less	25% of project cost
4,500 or more	50% of project cost

In order to receive an increased apportionment, the district must agree to contribute into the State Asbestos Abatement Fund the lesser of the 1/2 of 1% figure each year for a period of five years or the full percentage of the required district contribution. Installment payments will cease at the time the required district contribution is attained or at the end of five years, whichever occurs first.

(b) Funds may be apportioned on estimated project cost, however, any savings realized after the project is completed will revert to the State Asbestos Abatement Fund. A district certification of project completion must be submitted to OAL within 30 days of completion.

NOTE: Authority cited: Section 15503, Government Code; and Sections 16009 and 39619.6, Education Code. Reference: Sections 49410, 49410.2 and 49410.7, Education Code.

HISTORY

1. New Article 7 (Section 1867.2) filed 11–7–86; effective thirtieth day thereafter (Register 86, No. 45). For history of former Article 7, see Register 81, No. 18.

Article 8. Child Care and Development

§ 1868.1. Extended Day–Care Definitions.

(a) Board—The State Allocation Board.

(b) Eligible Contracting Agency—A licensed extended day–care services entity under contract with the Superintendent of Public Instruction.

(c) Relocatable Facility for Lease—A factory–built structure constructed in accordance with performance specifications prepared by the State Allocation Board.

(d) Child Care and Development Facility—Any building or part thereof in which child care and development services are provided.

(e) Authorized Agent—A person authorized to act and execute a lease on behalf of the governing body of the extended day–care services agency.

NOTE: Authority cited: Sections 15463 and 15503, Government Code. Reference: Sections 8277.7, 8493–8498, 16009, 16313, 17005 and 17788, Education Code.

HISTORY

1. New section filed 3–3–87; effective thirtieth day thereafter (Register 87, No.10).

§ 1868.2. Relocatable Facilities.

(a) Relocatable facilities leased to qualifying child care and development contracting agencies shall be utilized solely for the operation of a child care and development facility.

(b) Minor renovations and repairs may be performed to relocatable facilities if the work performed is the minimum amount necessary to comply with State and local health and safety standards and licensing requirements. The dollar amount may not exceed $2,500.00 per facility. Any work necessary in excess of this amount must be approved by the Board.

(c) If the Board determines that the need for an existing relocatable child care facility has ceased, it may take possession of the facility and dispose of it in the manner most advantageous to the State.

NOTE: Authority cited: Sections 15463 and 15503, Government Code. Reference: Sections 8277.7, 8493–8498, 16009, 16313, 17005 and 17788, Education Code.

HISTORY

1. New section filed 3–3–87; effective thirtieth day thereafter (Register 87, No.10).

§ 1868.3. Cost Reimbursement for Initial Utility Services Installation (Non–State Funded Extended Day Child Care Facilities).

Upon receipt of a request first submitted to and approved by the Superintendent of Public Instruction (as required by Education Code Section 8478), the Board may reimburse extended day care agencies for the costs of initial utility service installation when such facilities have not been acquired with State funds. Utility services may include but are not limited to water, sewer, electricity, telephone and fuel supplies from the nearest point of connection to the child care facility.

Reimbursement for initial utility services installation is limited to:

(a) such costs incurred after September 24, 1987.

(b) such costs incurred after January 1, 1986 in the case of relocatable facilities acquired by public, nonprofit agencies formed in 1984.

Payment of the reimbursement is contingent upon available State Child Care Facilities Fund resources at the time the request is received by the State Allocation Board.

NOTE: Authority cited: Sections 15463, 15490 and 15502, Government Code; and Sections 8477, 8477.3 and 8478, Education Code. Reference: Sections 8477, 8477.3 and 8478, Education Code.

HISTORY

1. New section filed 8–15–88; operative 9–14–88 (Register 88, No. 34).

§ 1869.1. Definitions.

(a) Board—The State Allocation Board.

(b) Eligible Agency

(1) Contracting Agency—A child care and development program (except for those providing extended day–care services) which is under contract with the Department of Education or will be under contract prior to the expenditure of any funds.

(2) Non–contracting Agency—A private nonsectarian child care and development program not under contract with the Department of Education and not providing extended day–care services.

(c) Authorized Agent—A person authorized to act and execute a lease or loan agreement on behalf of the governing body of the child care and development agency.

(d) Child Care and Development Facility—Any building or part thereof in which child care and development services are provided.

(e) Relocatable Facility for Lease—A factory–built structure constructed in accordance with performance specifications prepared by the Board.

NOTE: Authority cited: Sections 15463, 15490, 15502 and 15503, Government Code. Reference: Sections 8493–8498, 16009, 16313, 17005 and 17788, Education Code.

HISTORY

1. New section filed 3–3–87; effective thirtieth day thereafter (Register 87. No.10).

§ 1869.2. Loan for Renovation.

(a)A recipient of a loan for renovation shall agree to use the renovated facility for the purpose of child care and development during the specified loan period or longer.

(b)The maximum loan shall not exceed $50,000.00 per eligible facility.

(c)The loan period shall be 3 years for loans from $1.00 to $30,000.00, 4 years for loans from $30,001.00 to $40,000.00 and 5 years for loans from $40,001.00 to $50,000.00.

(d)Loan payments shall be $1.00 per year for the life of the loan.

(e)If a loan recipient ceases to use the facility for the purposes of child care and development prior to the specified loan period, the Board shall exercise its option to collect the outstanding balance of the loan, plus interest, by demanding payment from the bond required in Section 1869.3.

NOTE: Authority cited: Sections 15463, 15490, 15502 and 15503, Government Code. Reference: Sections 8493–8498, 16009, 16313, 17005 and 17788, Education Code.

HISTORY

1. New section filed 3–3–87; effective thirtieth day thereafter (Register 87, No. 10).

§ 1869.3. Bonding Requirement/Repayment Assurance.

As a condition to receiving a loan for renovation or repair, the recipient (a private, non–profit child care and development program performed pursuant to Education Code Section 8262; a child care and development program conducted pursuant to Education Code Sections 8225, et seq.; or a child care and development program operated by, or a facility owned by, a public entity) will be required to (1) provide a bond to insure the loan repayment; or (2) the certification provided in the form set out in Section 1869.4, assuring that a public entity has the ability to repay the loan, or in the case of a non–public entity, satisfactory evidence, such as an independent audited financial statement that is acceptable to the Executive Officer of the State Allocation Board, that indicates the non–public agency has the ability to repay the loan.

NOTE: Authority cited: Sections 15502 and 15503, Government Code. Reference: Sections 8493–8496, Education Code.

HISTORY

1. New section filed 3–3–87; effective thirtieth day thereafter (Register 87, No. 10.)
2. Amendment filed 2–15–89 as an emergency; operative 2–15–89 (Register 89, No. 8). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 6–15–89.

3. Certificate of Compliance transmitted to OAL 6–13–89. Order of Repeal of 2–15–89 emergency order filed 7–13–89 by OAL pursuant to Government Code Section 11349.6 (Register 89, No. 28).
4. Amendment filed 7–13–89 as an emergency; operative 7–13–89 (Register 89, No. 28). A Certificate of Compliance must be transmitted to OAL within 120 days, by 11–10–89, or emergency language will be repealed.
5. Certificate of Compliance as to 7–13–89 order transmitted to OAL 10–19–89 and disapproved by OAL on 11–20–89 (Register 89, No. 47).
6. Amendment refiled 11–22–89 as an emergency; operative 11–22–89 (Register 89, No. 47). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 3–22–90.
7. Certificate of Compliance as to 11–22–89 order transmitted to OAL 2–7–90 and filed 3–1–90 (Register 90, No. 10).

§ 1869.4. Certification to the State Allocation Board.

PUBLIC ENTITY

I hereby certify that, as a recipient of a loan for the renovation and repair of a facility for child care and development services, the

_____
(Legal Name of Contracting Agency)

has sufficient revenues to pay the principal and interest on the above loan and to maintain the operation of the child care facility as required by law.

_____
(Legal Name of Contracting Agency)

By_____
(Authorized Agent)

Date_____

NOTE: Authority cited: Sections 15502 and 15503, Government Code. Reference: Sections 8493–8496, Education Code.

HISTORY

1. New section filed 2–15–89 as an emergency; operative 2–15–89 (Register 89, No. 8). A Certificate of Compliance must be transmitted to OAL within 120days or emergency language will be repealed on 6–15–89.
2. Certificate of Compliance transmitted to OAL 6–13–89. Order of Repeal of 2–15–89 emergency order filed 7–13–89 by OAL pursuant to Government Code Section 11349.6 (Register 89, No. 28).
3. New section filed 7–13–89 as an emergency; operative 7–13–89 (Register 89, No. 28). A Certificate of Compliance must be transmitted to OAL within 120 days, by 11–10–89, or emergency language will be repealed.
4. Certificate of Compliance as to 7–13–89 order transmitted to OAL 10–19–89 and disapproved by OAL on 11–20–89 (Register 89, No. 47).
5. New section refiled 11–22–89 as an emergency; operative 11–22–89 (Register 89, No. 47). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 3–22–90.

[The next page is 259.]

6. Certificate of Compliance as to 11-22-89 transmitted to OAL 2-7-90 and filed 3-1-90 (Register 90, No. 10).

Subchapter 6. Real Estate Division—Relocation Assistance Program

(Originally Printed 4-6-74)

Article 1. General

§ 1870. Definitions.

The following terms shall mean:

"Average Annual Net Earnings" means one-half of any net earnings of the business or farm operation, before Federal and State income taxes, during the two taxable years immediately preceding the taxable year in which the business or farm operation moves from the real property acquired, or during such other period as the Department determines to be more equitable for establishing such earnings, and includes any compensation paid by the business or farm operation to the owner, his spouse or his dependents during such period. The term "owner" as used in this definition includes the sole proprietorship, the principal partners in a partnership, and the principal stockholders of a corporation, as determined by the Department. For purposes of determining a principal stockholder, stock held by a husband, his wife and their dependent children shall be treated as one unit.

"Base Monthly Rent" means the lesser of the average monthly rental paid by the displaced person for the three-month period prior to initiation of negotiations for the parcel and 25% of the displaced person's average monthly income. The economic rent may be considered the average monthly rental when the displaced person was the owner-occupant of the acquired dwelling or if the rental actually paid was not reasonably equal to market rentals for similar dwellings. The "average monthly rental paid" shall include any supplements supplied by others, except when required by law, such supplement is to be discontinued upon vacation of the property.

"Business" means any lawful activity, excepting a farm operation, conducted:

(1) Primarily for the purchase, sale, lease or rental of personal and real property, and for the manufacture, processing, or marketing of products, commodities, or any other personal property; or

(2) Primarily for the sale of services to the public; or

(3) Primarily by a non-profit organization; or

(4) Solely for the purpose of moving and related expenses under Section 1873.06, for assisting in the purchase, sale, resale, manufacture, processing, or marketing of products, commodities, personal property, or services by the erection and maintenance of an outdoor advertising display or displays, whether or not such display or displays are located on the premises on which any of the above activities are conducted.

"Comparable Replacement Dwelling" means a dwelling which satisfies each of the following standards:

(1) Decent, safe and sanitary (as defined in Section 1872), and comparable to the acquired dwelling with respect to number of rooms, habitable living space and type and quality of construction, but not lesser in rooms or living space than necessary to accommodate the displaced person.

To the extent practicable and consistent with this section, the replacement dwelling should be functionally equivalent and substantially the same as the acquired dwelling, but not excluding newly constructed housing.

(2) In an area not subjected to unreasonable adverse environmental conditions from either natural or man-made sources, and not generally less desirable than the acquired dwelling with respect to public utilities, public and commercial facilities and neighborhood conditions, including schools and municipal services, and reasonably accessible to the displaced person's present or potential place of employment; provided that a potential place of employment may not be used to satisfy the accessibility requirement if the displaced person objects for a reasonable cause.

The Act and these regulations do not require the replacement dwelling be generally as desirable as the acquired dwelling with respect to environmental characteristics. Though a displaced person does not have to accept a dwelling subject to unreasonable adverse environmental conditions, neither is the Department required to duplicate environmental characteristics, such as scenic vistas or proximity to the ocean, lakes, rivers, forests or other natural phenomena.

If the displaced person so requests, every reasonable effort shall be made to relocate such person within or near to his existing neighborhood. Whenever practicable, the replacement dwelling shall be reasonably close to relatives, friends, services or organizations with whom there is an existing dependency relationship.

(3) Available on the private market to the displaced person and available to all persons regardless of race, color, sex, marital status, religion, or national origin in a manner consistent with Title VIII of the Civil Rights Act of 1968.

(4) Within the financial means of the displaced person. A replacement dwelling is within the financial means of the displaced person if the monthly housing costs (including payments for mortgage, insurance and property taxes) or rental cost (including reasonably comparable utility and recurring expenses such as gardening, garaging, and similar necessary fees) minus any replacement housing payment available to the person under the provisions of these regulations does not exceed twenty-five percent (25%) of the person's average monthly income. A replacement dwelling is within the financial means of a displaced person also if the purchase price of the dwelling, including related increased interest costs and other reasonable expenses, does not exceed the amount of just compensation provided for the acquired dwelling and the replacement housing payments available to the person under these regulations.

"Conventional Loan" means a promissory note secured by a trust deed or mortgage made by a bank or savings and loan associations. A conventional loan is not insured or guaranteed by an agency of the State or Federal government.

"Counted Room" means that space in a dwelling unit containing the usual quantity of household furniture, equipment and personal property. It shall include such space as a recreation room, living room, library, study, dining room, kitchen, laundry room, basement, bedroom, and garage. Rooms or storage areas which contain substantial amounts of personal property equivalent to one or more rooms may be counted as additional rooms.

"Date of Initiation of Negotiations for the Parcel" means the date of the first written offer to purchase the real property.

"Department" means the Department of General Services acting in connection with any acquisition by the State Public Works Board.

"Displaced Person" means any person who moves from real property, or who moves his personal property from real property, either as a result of the acquisition of such real property, in whole or in part, by the Department or by any person having an agreement with or acting on behalf of a public entity, or as the result of a written order from the Department to vacate the real property for public use.

A displaced person may or may not qualify as an "eligible person," as defined in these regulations.

"Dwelling" means the primary residence of a person, including any single-family residence, a single-family unit in a two-family, multi-family or multipurpose building, a unit of a condominium or cooperative housing project, a nonhousekeeping unit, a mobile home, r any other residential unit considered to be part of the real property acquired. A residence need not be decent, safe and sanitary to be a dwelling. A second home shall be considered to be a dwelling only for the purpose of establishing eligibility for payment of moving expense benefits.

"Economic Rent" means the reasonable rental expectancy if the property were available for rent or lease on the open market based on the rent

or lease payment being paid for comparable space as distinguished from actual or contract rent or lease payment paid for the acquired property.

"Effective Rate of Interest" means the annual percentage rate paid on the debt of a mortgage as a result of including debt service charges in the total interest to be paid on the mortgage debt, as an incident to the extension of credit, when such debt service charges are normal to the market.

"Elderly Household" means a household in which the head of household or spouse is 62 years or older.

"Eligible Person" means any displaced person who is, or becomes, lawfully entitled to any relocation payment under these regulations.

"Existing Patronage" means the net annual average dollar volume of business transacted during the two taxable years immediately preceding the taxable year in which the business is relocated.

"Family" means two or more individuals, one of whom is the head of a household, plus all other individuals regardless of blood or legal ties who live with and are considered a part of the family unit. Where two or more individuals occupy the same family dwelling with no identifiable head of a household, they shall be treated as one family for replacement housing payment purposes.

"Farm Operation" means any activity conducted solely or primarily for he production of one or more agricultural products or commodities, including timber, for sale or home use and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

"Gross Income" means the total annual income of an individual, or where a family is displaced, the total annual income of the adult members of the household, irrespective of other expenses and voluntary or involuntary deductions and including, but not limited to, salaries, wages, public assistance payments, tips, commissions, unemployment, rents, royalties, dividends, interest, profits, pensions and annuities, less the following:

(1) A deduction of $500 for each dependent in excess of three.

(2) A deduction of ten percent (10%) of the total annual income for an elderly or handicapped household.

(3) A deduction for recurring, extraordinary medical expenses (defined for this purpose to mean medical expenses in excess of three percent of total annual income) where not compensated for or covered by insurance or other sources, such as public assistance or tort recovery.

(4) A deduction of reasonable amounts paid for the care of children or sick or incapacitated family members when determined to be necessary to employment of the household head or spouse, except that the amount deducted shall not exceed the amount of income received by the person thus released.

Gross income is divided by twelve (12) to ascertain the average monthly income. Relocation and property acquisition payments are not to be considered as income for determination of financial means.

"Handicapped Household" means a household in which any member is handicapped or disabled.

"Mobile Home" means a structure, transportable in one or more sections, which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities and includes the plumbing, heating, air conditioning, and electric systems contained therein. A self–propelled vehicle is not a mobile home.

"Mortgage" means such classes of liens, including Deeds of Trust as are commonly given to secure advances on, or the unpaid purchase price of, real property, under the laws of the State of California, together with the credit instruments, if any, secured thereby.

"Moving Expense" means the costs necessary to pack, crate, disconnect, dismantle, load, insure, temporarily store, remove, transport, unpack, uncrate, reassemble, reconnect, reinstall, and unload machinery, equipment, or other personal property (including goods and inventory kept for sale) not acquired by the Department, including connection charges imposed by public utilities for starting utility service and necessary temporary lodging and transportation of eligible persons. Moving expense shall not include:

(1) The cost of construction or improvement at the new location to replace property for which compensation was paid in the acquisition;

(2) Any loss of, or damage to, personal property caused by the fault or negligence of the displaced person, his agent, or employee in the process of moving where insurance to cover such loss or damage was available;

(3) Any payment for moving personal property where such property is purchased as part of the acquisition;

(4) Additional expenses incurred because of living in a new location;

(5) Cost of moving structures, improvements or other real property in which the displaced person reserved ownership;

(6) Interest on loans to cover moving expenses;

(7) Loss of goodwill;

(8) Loss of business or profits;

(9) Loss of trained employees;

(10) Personal injury;

(11) Payments for search costs in connection with locating a replacement dwelling.

"Nonprofit Organization" means a corporation, partnership, individual or other public or private entity, engaged in a business, professional or institutional activity on a nonprofit basis, necessitating fixtures, equipment, stock in trade, or other tangible property for the carrying on of the business, profession or institutional activity on the premises.

"Owner." A person "owns a dwelling" if he:

(1) Holds fee title, a life estate, a fifty (50) year lease, or a lease with not less than twenty (20) years to run from date of acquisition of the property for the project;

(2) Holds an interest in a cooperative housing project which includes the right of occupancy of a dwelling unit therein;

(3) Is the contract purchaser of any of the foregoing estates or interests;

(4) Has a leasehold interest with an option to purchase;

(5) Owns a mobile unit which under State law is determined to be real property, not personal property;

(6) Who has succeeded to any of the foregoing interests by devise, bequest, inheritance or operation of law. In the event of acquisition of ownership by any of the foregoing methods, the tenure of ownership, not occupancy, of the succeeding owner shall include the tenure of the preceding owner.

"Owner–Occupant" means an owner who occupies the residential dwelling being acquired by the Department as his primary residence.

"Person" means any individual, partnership, corporation or association.

"Prepaid Expenses" means items paid in advance by the seller of real property and prorated between such seller and the buyer of such real property at the close of escrow including, but not limited to real property taxes, fire insurance, home owners' association dues and assessment payments.

"Primary Residence" means a residential dwelling which is occupied as the occupants domicile. A dwelling will qualify as a primary residence when:

(1) The occupant has lived in the dwelling to be acquired for more than 50% of the time in the year prior to the State's first written offer; and

(2) The occupant officially acknowledges the residential dwelling as his primary residence by voter registration, address on tax returns, home owners exemption, mailing address, proximity to occupant's work, schools, etc.

"Purchase" as used in connection with claiming replacement housing payments with respect to:

(1) Real property means the close of escrow by which the title to replacement property was conveyed to the claimant of a relocation payment; or if no escrow was used, "purchase" means the delivery to such claimant of the deed to the replacement property or the delivery of a completely executed installment contract for purchase.

(2) Mobile homes means the registration of the vehicle with the California Department of Motor Vehicles in the name of the claimant.

(3) For purposes of this Article, the leasing of a condominium or other suitable dwelling for a fifty (50) year period, or for a term which exceeds the life expectancy of the displaced person as determined from the most recent life tables in Vital Statistics of the United States, as published by the Public Health Service of the Department of Health, Education and Welfare, shall be deemed a purchase of a condominium or other dwelling.

"Relocation Payment" means any payment made under the provisions of this Article; including, but not limited to, payments for: actual or reasonable moving expense, payments made in-lieu of moving expense, purchase differential payments, rental differential payments, interest differential payments, and payments covering incidental expenses of the acquisition of replacement properties.

"Stated Mortgage Interest Rate" means the annual percentage rate to be paid on the debt of a mortgage as set forth in the mortgage or other credit instrument.

"Tenant-Occupant" means a person who rents or is otherwise in lawful possession of a dwelling, including a sleeping room, which is owned by another and is the displacee's primary residence.

NOTE: Authority cited: Section 7267.8, Government Code. Reference: Section 7268, Government Code and "Guidelines" adopted by the Commission of Housing and Community Development.

HISTORY

1. Amendment filed 1-18-77 as an emergency; effective upon filing (Register 77, No. 4). For prior history, see Register 76, No. 24.
2. Certificate of Compliance filed 5-17-77 (Register 77, No. 21).
3. Amendment filed 10-18-77; effective thirtieth day thereafter (Register 77,

§ 1870.01. Relocation Plans.

(a) General. Prior to the undertaking of a project, the Department shall prepare a Relocation Plan, based upon a survey and analysis of both the housing needs of the affected displaced persons and the available replacement housing, which will assure that, within a reasonable period of time, prior to displacement, to the extent that it can be reasonably accomplished, there will be available in areas not generally less desirable in regard to public utilities and public and commercial facilities, and at rents or prices within the financial means of the families and individuals displaced, decent, safe, and sanitary dwellings, equal in number to the number of, and available to, such displaced persons who require such dwellings and reasonably accessible to their place of employment.

(1) All persons to be displaced, any relocation committee formed of persons displaced shall encourage the formation of a relocation committee consisting of representatives of the residents and interested community organizations in the displacement area and affected displaced persons.

(2) The term "undertaking a project," for purposes of this section, shall mean the date the Public Works Board authorizes the acquisition or the initiation of negotiations for the acquisition of the affected ownership(s).

(3) The approval of the Relocation Plan vests in the Director of the Department of General Services, as head of the State Agency.

(4) When determining a displacee's financial ability to afford replacement housing, replacement housing payments, and rental rates after acquisition, the displacee shall provide a written statement as to his gross income which will be updated annually or as necessary. Failure to provide such written statement shall require the Department to make determinations on the best data known and available to them.

(b) When considering the availability of replacement housing, the Department shall adjust the available housing inventory in the replacement area, if necessary, by excluding:

(1) Non-decent, safe, and sanitary units;

(2) Uncompleted new construction or rehabilitation which are not likely to be available at the time of displacement.

(3) Those units considered by the Department to be turnover in the replacement area.

(4) Subsidized publicly owned housing which will not reasonably be available to the displacees at the time of displacement.

(c) Each Relocation Plan shall provide a statement as to the need for last resort housing. In the event of a reasonably anticipated need for such housing, an estimate of the cost, including overhead, will be included as a separate amount.

NOTE: Authority cited: Section 7267.8, Government Code. Reference: Section 7268, Government Code.

HISTORY

1. New section filed 1-18-77 as an emergency; effective upon filing (Register 77, No. 4).
2. Certificate of Compliance filed 5-17-77 (Register 77, No. 21).

§ 1870.02. Eviction Policy.

(a) Eviction of persons in occupancy as of the date of acquisition shall be undertaken only for one or more of the following reasons:

(1) Failure to pay rent, except in those cases where the failure to pay is due to the lessor's failure to keep the premises in habitable condition, is the result of harassment or retaliatory action or is the result of discontinuation or substantial interruption of services.

(2) Performance of a dangerous, illegal act in the unit.

(3) Material breach of the rental agreement and failure to correct breach within 30 days of notice.

(4) Maintenance of a nuisance and failure to abate within a reasonable time following notice.

(5) Refusal to accept one of a reasonable number of offers of replacement dwellings.

(6) The eviction is required by State or local law and cannot be prevented by reasonable efforts on the part of the public entity.

(7) The building has structural defects existent at the time of purchase by the Department.

NOTE: Authority cited: Section 7267.8, Government Code. Reference: Section 7268, Government Code.

HISTORY

1. New section filed 1-18-77 as an emergency; effective upon filing (Register 77, No. 4).
2. Certificate of Compliance filed 5-17-77 (Register 77, No. 21).

§ 1871. Eligibility.

(a) Relocation assistance and benefits, as provided in these regulations, shall be available to:

(1) Any person who lawfully occupies property from which he will be displaced.

(2) Any person in lawful occupancy who will move from real property or will move his personal property from real property because he will be displaced from other real property on which he conducts a business or farm operation.

(3) Any person in lawful occupancy who moves from real property as a result of its acquisition by the Department for a public use whether the move is voluntary or involuntary.

(4) Any person in lawful occupancy at the time of initiation of negotiations who moves as the result of the pending acquisition and the property from which he is displaced is subsequently acquired for a public use.

(b) Any person who becomes an occupant of real property after in termination of the tenancy sooner than otherwise would be expected. The Department should inform prospective tenants regarding the projected date of displacement.

(c) Subsequent sale to a private person of housing provided by the State as last resort housing does not establish eligibility for relocation assistance or benefits for any person in occupancy at the time of such sale.

HISTORY

1. Amendment filed 3-11-76 as an emergency; effective upon filing (Register 76, No. 11).
2. Certificate of Compliance filed 6-1176 (Register 76, No. 24).
3. Amendment filed 1-18-77 as an emergency; effective upon filing (Register 77, No. 4).
4. Certificate of Compliance filed 5-17-77 (Register 77, No. 21).

§ 1872. Standards for Decent, Safe, and Sanitary Dwellings.

(a) A decent, safe, and sanitary dwelling is one which meets all of the following minimum requirements:

(1) Conforms with all applicable provisions for existing structures that have been established under State or local building, plumbing, electrical, housing and occupancy codes and similar ordinances or regulations.

(2) Has a continuing and adequate supply of potable safe water.

(3) Has a kitchen or an area set aside for kitchen use which contains a sink in good working condition and connected to hot and cold water, and an adequate sewage system. A stove and refrigerator in good operating condition shall be provided when required by local code, ordinances or custom. When these facilities are not so required by local codes, ordinances, or custom, the kitchen area or area set aside for such use shall have utility service connections and adequate space for the installation of such facilities.

(4) Has an adequate heating system in good working order which will maintain a minimum temperature of 70 degrees in the living area, excluding bedrooms, under local outdoor design temperature conditions. A heating system will not be required in those geographical areas where such is not normally included in new housing.

(5) Has a bathroom, well–lighted and ventilated and affording privacy to a person within it, containing a lavatory basin and a bathtub or stall shower, properly connected to an adequate supply of hot and cold running water, and a flush closet, all in good working order and properly connected to a sewage disposal system. a bathroom, well–lighted and ventilated and affording privacy to a person within it, containing a lavatory basin and a bathtub or stall shower, properly connected to an adequate supply of hot and cold running water, and a flush closet, all in good working order and properly connected to a sewage disposal system.

(6) Has an adequate and safe wiring system for lighting and other electrical services.

(7) Is structurally sound, weathertight, in good repair and adequately maintained.

(8) Each building used for dwelling purposes shall have a safe unobstructed means of egress leading to safe open space at ground level. Each dwelling unit in a multi–dwelling building must have access either directly or through a common corridor to a means of egress to open space at ground level.

In multi–dwelling buildings of three stories or more, the common corridor on each story must have at least two means of egress.

(9) Has 150 square feet of habitable floor space for the first occupant in a standard living unit and at least 100 square feet of habitable floor space for each additional occupant. The floor space is to be subdivided into sufficient rooms to be adequate for the family. All rooms must be adequately ventilated. Habitable floor space is defined as that space used for sleeping living, cooking or dining purposes, and excludes such enclosed places as closets, pantries, bath or toilet rooms, service room, connecting corridors, laundries, and unfinished attics, foyers, storage spaces, cellars, utility rooms and similar spaces.

(b) A decent, safe and sanitary sleeping room is one which includes the minimum requirements contained in paragraph (a), subparagraphs (2), (4), (5), (6), (7), and (8) of this section and the following:

(1) At least 100 square feet of habitable floor space for the first occupant and 50 square feet of habitable floor space for each additional occupant.

(2) Lavatory, bath and toilet facilities that provide privacy, including a door that can be locked if such facilities are separate from the room.

(c) A decent, safe, and sanitary mobile home is one which includes the minimum requirements contained in paragraph (a), subparagraphs (2), (3), (4), (5), (6), (7), (8), and (9) of this Section except that it may have 70 square feet of habitable floor space for each additional occupant, and the following:

(1) Bears the insignia of approval issued by the State of California, Department of Housing and Community Development, pursuant to the California Health and Safety Code, except those manufactured prior to September 1, 1958.

(d) The Department may approve exceptions to the standards in this Section where unusual conditions exist.

HISTORY

1. Amendment filed 3–11–76 as an emergency; effective upon filing (Register 76, No. 11).
2. Certificate of Compliance filed 6–11–76 (Register 76, No. 24).

Article 2. Relocation Payments

§ 1873. Relocation Payments—General Provisions.

(a) Appeals. Any displaced person aggrieved by a determination as to eligibility for a relocation payment, or the amount of such payment, may have his application reviewed by a Relocation Appeals Board designated by Director of the Department of General Services to hear such appeals. The Appeals Board shall make its recommendations to the Director who will make the final decision on the appeal. The Department shall inform all displaced persons of their right of appeal. They shall be furnished the address of the Relocation Appeals Board. They shall be given full opportunity to be heard and a prompt decision shall be made. Appeals must be submitted prior to the final date specified in subsection (d) of this Section for applying for relocation payments.

(b) Form of Application. Application for relocation payments or appeals shall be made by the State under an Order of Possession.

(c) Payment Date. No relocation payment shall be made by the Department prior to the date title to the property vests in the State of California through close of purchase escrow or Final Order of Condemnation or the date of possession by the State under an Order of Possession.

(d) Time Limit on Filing Applications. Except as otherwise provided, applications for relocation payments must be submitted to the Department within 18 months from the date of vacation of the acquired property or the date he receives final compensation for the property, whichever is later.

(e) Assignment of Relocation Payments. The payments described in this Article may be made directly to the displaced person upon proper application, or upon proper instruction addressed to the Department and attached to his application for payment, the payments may be made directly:

(1) To a lessor or landlord for rent; or

(2) To a moving company for moving expenses; or

(3) To an escrow agent pursuant to paragraph (f) of this subsection.

(f) Payments into Escrow. In cases where a displaced person qualifies for the payments described in this Article except that he has not yet purchased or occupied a suitable replacement dwelling, the Department, after inspecting the proposed replacement dwelling and finding that it meets the standards for decent, safe and sanitary set forth in Section 1872 of this Article, may deposit the amount of the replacement housing or rent supplement for which the displaced person may be eligible in an escrow with a bank, trust company, licensed escrow agency, building and loan or savings and loan association, or title company to the account of the displaced person with instruction for payment of such funds from escrow. Such escrow instructions shall be adequate to assure compliance with provisions of this Article relating to purchase and occupancy and to assure return of such funds from escrow to the Department in the event of noncompliance with such provisions.

HISTORY

1. Amendment filed 3–11–76 as an emergency; effective upon filing (Register 76, No. 11).
2. Certificate of Compliance filed 6–11–76 (Register 76, No. 24).
3. Amendment filed 1–18–77 as an emergency; effective upon filing (Register 77, No. 4).

4. Certificate of Compliance filed 5–17–77 (Register 77, No. 21).

§ 1873.01. Moving and Related Expense Payments—General Provisions for All Relocated Individuals, Families, Businesses and Farms.

(a) Eligibility to Receive Moving Cost Payment.

(1) Any individual, family, business or farm operator is eligible to receive payment for the reasonable expenses of moving his personal property when

(A) He is in lawful occupancy at the initiation of negotiations for the acquisition of the real property; and

(B) He moves from the real property or moves his personal property from the real property subsequent to the date of initiation of negotiation; or,

(C) The real property is subsequently acquired.

(b) One Move Per Person. No moving expense payment will be made for more than one move of a displaced person except where found by the Department to be in the public interest and prior approval is secured.

(c) Payment Only After Move Completed. Moving expense payments shall be made only after the move has been accomplished except as provided in subsections (d) and (e) of this Section.

(d) Payments in Advance. In case of undue hardship, payment of moving expenses to an eligible displacee may be made in advance of moving.

(e) Partial Payments. The Department may make partial payments of moving expense claims when such claims are based on the actual costs of moving, provided the amount of such partial payment does not exceed the actual cost incurred up to the time such payment is claimed.

(f) Payments Directly to Mover. By written prearrangement between the Department, the displaced person and the mover, a displaced person may present unpaid moving bills to the Department and the Department may pay the mover directly.

(g) Distance Limited to 50 Road Miles. The allowable expense for transportation shall not exceed the cost of moving 50 road miles measured from the point from which the move was made to the point of relocation via the most commonly used routes between such points. In special cases where the Department determines that relocation cannot be accomplished within the 50 mile area, the allowable expense for transportation may be increased with the prior approval of the Department.

(h) Storage. When an actual expense basis is used and the Department determines that it is necessary for a relocated person to store his personal property for a reasonable time, not to exceed twelve months, the cost of such storage shall be paid as a part of the moving expense. Payment shall not be made for storage of personal property on the property being acquired or on other property owned by the relocatee. Storage expense shall not be paid where the displaced person elects payment under any of the schedules set forth in Section 1873.02 (c) of this Article.

(i) Cost of Advertising for Bids. The expenses incurred in advertising for packing, crating and transportation are reimbursable when the Department determines that such advertising is necessary. Payment of such expense shall be limited to complicated or unusual moves where advertising is the only practical method of securing bids.

(j) Inspection of Books and Records. All books and records kept by a displaced person as to actual moving expense incurred shall be subject to review and audit by a Department representative during reasonable business hours.

(k) Owner–Retained Dwellings. When an owner retains his dwelling, the cost of moving it onto the remainder or replacement land is not eligible as a part of the cost of moving personal property. If the owner chooses to use his dwelling as a means of moving personal property, payment shall be based on the schedules set forth in Section 1873.02 (c) of this Article.

(l) Personalty Sold to Others. If a displaced person who is eligible to receive payment for moving expenses under subsection (a) of this Section sells, conveys, or transfers title to personal property located on real property acquired by the State to another person, such other person shall not be eligible to receive payment of moving expense except as provided for direct losses of tangible personal property in Section 1873.03 (c) of this Article.

(m) Moves From Separate Property. Where the acquisition of real property used for a business or farm operation which is eligible for a payment under subsection (a) of this Section causes a person to vacate a dwelling or other real property separate from and not acquired by the State, or move his personal property from other real property separate from and not acquired by the State, said person is eligible for reimbursement of the appropriate moving expenses under Sections 1873.02, 1873.03(b), (c) and (d), 1873.05 and 1873.06.

(n) Moves From Partial Takings. Where only a portion of a larger parcel is acquired, a displaced person shall be eligible for moving expense payment only where the removal of his personal property from the property acquired is necessary and is not otherwise compensated.

(o) Insurance. The cost of insurance premiums covering the reasonable replacement value of personal property for loss and damage while in storage or transit is reimbursable.

(p) Removal and Reinstallation Expense. The expense of removal, reinstallation and reestablishment of machinery, appliances and other items of personal property which were not acquired by the Department, including reconnection of utilities to such items, and which does not constitute an improvement to the replacement site (except where required by law), are reimbursable. Such removal, reinstallation, reestablishment or reconnection costs or items classified as real property by the Department and which were retained by the owner, are not reimbursable.

History

1. Amendment filed 3–11–76 as an emergency; effective upon filing (Register 76, No. 11).
2. Certificate of Compliance filed 6–11–76 (Register 76, No. 24).

§ 1873.02. Moving Payments to Individuals and Families.

(a) General. A displaced individual or family eligible under Section 1873.01 (a) is entitled to receive a payment for moving his personal property, himself and his family. Such displaced persons have the option of payment on the basis of actual, reasonable moving expenses or a moving expense schedule.

(b) Actual, Reasonable Moving Expenses.

(1) Moves by For–Hire Carriers. A displaced individual or family may be paid the actual, reasonable cost of a move accomplished by for–hire carriers. The displaced person may elect, with Departmental approval, either of the following options:

(A) The displaced person shall secure at least two estimates from responsible for–hire carriers and submit them to the Department for approval prior to the move. The Department will authorize payment for the move based on the lowest of such bids or estimates.

Payment shall be made by the Department upon presentation of the paid, receipted and itemized bill after the claimant has moved from the premises.

If this creates a financial hardship on the displacees, the Department will secure an assignment from the displacee to allow direct payment to be made to the mover upon presentation of itemized bills after claimant has moved from the premises.

(B) The displaced person shall be given a moving service authorization by the Department and may select a for–hire carrier from the list of eligible for–hire carriers established by the Department. When the for–hire carrier has completed the move, the original moving service authorization will be returned to the Department by the fore–hire carrier with the itemized moving cost bill. The Department shall pay the for–hire carrier directly. Such moves shall be at the minimum rates, rules and regulations prescribed and established by the California Public Utilities Commission.

(2) Self Moves. In the case of a self move the displaced individual or family may be paid his actual moving costs, supported by receipted bills or other evidence of expenses incurred but such payment may not exceed the estimated cost of moving commercially. The estimated cost may be prepared by a commercial moving company or, when not in excess of

$1,000, by a qualified Department employee other than the employee handling the claim.

(3) Cost of Transportation of Displacees. The costs of transportation of displaced individuals and families to the new location are also eligible. Such costs may be on a mileage basis, not to exceed 15 cents per mile, or reasonable, actual fees if commercial transport is used and may include special services such as the cost of an ambulance to transport displaced invalids.

(4) Cost of Meals and Lodging. The actual reasonable costs of meals and lodging are eligible when the Department determines such costs are required because of unforeseen circumstances or practical necessities of the moving operation.

(c) Moving Expense Schedules.

(1) In lieu of actual and reasonable moving expense, any individual or family displaced from a dwelling unit may elect to receive a payment which shall cover all items and incidentals necessary to the vacating of the property acquired according to the following:

(A) A moving expense allowance not to exceed $300 and determined in accordance with established Federal Highway Administration schedules maintained by the California Department of Transportation, and

(B) A dislocation allowance of $200.

(2) The owner–occupant of a multi–family dwelling may elect to receive payment for his own dwelling unit under this Section, and is eligible to receive payment under Section 1873.03 for his personal property in other units of the multi–family dwelling.

HISTORY

1. Amendment filed 3–11–76 as an emergency; effective upon filing (Register 76, No. 11).
2. Certificate of Compliance filed 6–11–76 (Register 76, No. 24).
3. Amendment of subsection (c) filed 1–18–77 as an emergency; effective upon filing (Register 77, No. 4).
4. Certificate of Compliance filed 5–17–77 (Register 77, No. 21).

§ 1873.03. Moving Payments to Business or Farm.

(a) General. (1) The owner of a displaced business or farm eligible under Section 1873.01 (a) is entitled to receive a payment for actual reasonable moving and related expense which include:

(A) Actual reasonable expenses in moving his business, farm, or other personal property as provided in subsection (b), below.

(B) Actual direct losses of tangible personal property in moving or discontinuing his business or farm, as provided in subsection (c), below.

(C) Actual reasonable expenses in searching for a replacement business or farm, as provided in subsection (d), below.

(2) In lieu of the payment for actual expenses and losses as specified in subsection (a) (1) (A), (B) and (C) of this Section a displaced business or farm may be eligible for a fixed payment as provided in subsection (e).

(b) Actual Reasonable Moving Expenses.

(1) The owner of a business or farm may be paid the actual, reasonable cost of a move accomplished by a commercial mover. Where possible, at least two firm bids shall be obtained prior to the move and submitted to the Department for approval. The Department will authorize payment based on the lowest bid.

(A) Where appropriate, the Department may give the displaced business a Moving Service Authorization in accordance with the provisions of Section 1873.02.(b)(1)(B).

(2) Self Moves.

(A) A business or farm which performs the move on its own account shall prepare a certified inventory of the items of personal property to be moved. When the department can obtain two acceptable bids or estimates from qualified estimators based on the certified inventory, the owner of the displaced business or farm may be paid an amount equal to the low bid or estimate, without negotiation. When circumstances warrant, the Department may negotiate a lower amount not to exceed the lower of the two acceptable bids or estimates. The amount to be paid shall be agreed upon in writing in advance of the move. Upon completion of the move the owner must certify in his claim for payment that the items listed in the certified inventory were actually relocated. If the Department finds that the items actually relocated differ significantly from the certified inventory, payment of moving cost shall be adjusted accordingly.

(B) If two estimates cannot be obtained, the owner may be paid his actual, reasonable moving costs supported by receipted bills or other evidence of expenses incurred.

(C) A qualified employee of the Department, other than the employee who is handling the claim, may make a moving expense finding not to exceed $1,000.00. The amount of such moving expense finding may be paid the owner of the business or farm upon completion of the move without supporting evidence of actual expenses incurred.

(3) Alternate Payments.

(A) The provisions of subsection (c) of this Section contain the criteria under which reimbursement is based for personal property which is not moved to the new site.

(B) When personal property which is used in connection with the business or farm to be moved is of low value and high bulk and the estimated cost of moving would be disproportionate in relation to the value, the Department may negotiate and agree, in writing, with the owner for an amount not to exceed the difference between the cost of replacement of comparable item(s) on the market and the amount which would probably have been received for the item(s) on liquidation.

(c) Actual Direct Losses of Tangible Personal Property. Reimbursement for the actual direct losses of tangible personal property is allowed when a person who is displaced from his place of business or farm is entitled to relocate such property in whole or in part but elects not to do so. Payments for actual direct losses may only be made after a bona fide effort has been made by the owner to sell the item involved. When the item is sold the payment will be determined in accordance with subsection (c) (1) or (c) (2) of this Section. If the item cannot be sold the owner will be compensated in accordance with subsection (c) (3) of this Section. The sales prices, if any, and the actual, reasonable costs of advertising and conducting the sale shall be supported by a copy of the bills of sale or similar documents and by copies of any advertisements, offers to sell, auction records, and other documentation supporting the bona fide nature of the sale.

(1) If the business or farm is to be reestablished and an item of personal property which is used in connection with the enterprise is not moved but promptly replaced with a comparable item at the new location, the reimbursement shall be the lesser of:

(A) The replacement cost of the item not moved minus the net proceeds of the sale; or

(B) The estimated cost of moving the item.

(2) If the business or farm is being discontinued or the item is not to be replaced in the reestablished enterprise the payment will be the lesser of:

(A) The difference between the depreciated value of the item in place and net proceeds of the sale; or

(B) The estimated cost of moving the item.

(3) If a bona fide sale is not effected under subsection (c) (1) or (c) (2) of this Section because no offer is received for the property, the owner shall be entitled to the reasonable expenses of the sale. The displaced owner shall arrange to have the personalty removed from the premises at no cost by a junk dealer, etc. If this fails the Department shall remove the item in the most economical manner.

(4) When personal property is abandoned with no effort made by the displaced owner to dispose of such property by sale or by removal at no cost as specified in the above paragraphs, the owner will not be entitled to moving expenses, or losses, for the items involved.

(d) Actual Reasonable Expenses In Searching For a Replacement Business or Farm. (1) The owner of a displaced business or farm may be reimbursed for the actual reasonable expenses in searching for a replacement business, not to exceed $500.00. Such expenses may include transportation expenses, meals, lodging away from home and the reasonable value of time actually spent in search, including the fees of real estate

agents or real estate brokers if actually required and paid by the displaced business.

(A) Receipted Bills. All expenses claimed except value of time actually spent in search must be supported by receipted bills.

(B) Time Spent In Search. Payment for time actually spent in search shall be based on the applicable hourly wage rate for the person conducting the search but may not exceed $10.00 per hour. A certified statement of the time spent in search and hourly wage rate shall accompany the claim.

(e) In Lieu of Actual Moving Expenses. In lieu of the payments described in subsections (b), (c), and (d) of this Section, an owner of a discontinued or relocated business or farm is eligible to receive a payment equal to the average annual net earnings of the enterprise except that such payment shall be not less than $2,500.00 nor more than $10,000.00 providing the following requirements are met:

(1) Department Shall Determine. In order for the owner of a business or farm to be entitled to this payment, the Department shall determine that:

(A) The business or farm cannot be relocated without a substantial loss of its existing patronage. Loss of existing patronage is determined by comparing existing patronage as defined in Section 1870 of this Article to the estimated net income of the business for the 12 month period after relocation. Such determination shall be made only after consideration of all pertinent circumstances, including but not limited to the following factors:

1. The type of business or farm conducted by the displaced owner;
2. The nature of the clientele of the displaced business or farm;
3. The relative importance of the present and proposed location to the displaced business or farm.
4. Availability of replacement sites within the financial means of the displaced business or farm.
5. Competitive advantage of the existing location.
6. In case of a partial taking of a business or farm, the determination of whether the property remaining is no longer an economic unit.
7. Substantial additional capital expense required, or higher operating costs at the replacement site.

(B) The business or farm is not part of a commercial enterprise having at least one other establishment which is not being acquired which is engaged in the same or similar enterprise. The Department may determine by suitable criteria that the remaining facility is not another "establishment" for purposes of this section.

(C) The business or farm contributes materially to the income of the displaced owner. A part–time individual or family occupation in the home which does not contribute materially to the income of the displaced owner is not eligible for this payment.

(2) Owner Must Provide Information. To be eligible for the payment in lieu of actual and reasonable moving expense, the displaced business or farm must make its income tax and sales tax returns and its financial statements and accounting records available for audit for confidential use by the Department.

(3) In Business or Farming Less Than 2 Years. If the business or farm affected can show that it was in operation 12 consecutive months during the two taxable years prior to the taxable year in which it is required to relocate, had income during such period and is otherwise eligible, the owner of an enterprise is eligible to receive the in lieu payment. Where the business or farm was in operation for 12 consecutive months or more but was not in operation during the entire two preceding taxable years, the payment shall be computed by dividing the net earnings by the number of months the business or farm was operated and multiplying by 12. A taxable year is defined as any 12–month period used by the business or farm in filing income tax returns.

History

1. Amendment filed 3–11–76 as an emergency; effective upon filing (Register 76, No. 11).
2. Certificate of Compliance filed 6–11–76 (Register 76, No. 24).
3. Amendment of subsections (b), (d) and (e) filed 1–18–77 as an emergency; effective upon filing (Register 77, No. 4).
4. Certificate of Compliance filed 5–17–77 (Register 77, No. 21).

§ 1873.04. Moving Payments to Farm Operators.

History

1. Repealer filed 3–11–76 as an emergency; effective upon filing (Register 76, No. 11).
2. Certificate of Compliance filed 6–11–76 (Register 76, No. 24).

§ 1873.05. Moving Payments to Nonprofit Organizations.

(a) A displaced nonprofit organization eligible under Section 1873.01 (a) is eligible to receive payments for either

(1) Actual reasonable moving expenses, actual direct losses of tangible personal property, actual reasonable expenses in

(2) In lieu of actual expenses in accordance with Section 1873.03 (b), (c), (d), and (e), a payment in the amount of $2,500 if the Department determines that:

(A) The nonprofit organization cannot be relocated without a substantial loss of its existing patronage. The term "existing patronage" as used in connection with nonprofit organizations only includes the persons, community or clientele serviced or affected by the activities of the nonprofit organization; and

(B) The nonprofit organization is not part of an enterprise having at least one other establishment not being acquired which is engaged in the same or similar activity.

History

1. Amendment filed 3–11–76 as an emergency; effective on filing (Register 76, No. 11).
2. Certificate of Compliance filed 6–11–76 (Register 76, No. 24).

§ 1873.06. Advertising Signs.

(a) General.

(1) The owner of a displaced advertising sign eligible under Section 1873.01 (a) is eligible to receive a payment for actual reasonable moving and related expenses which include:

(A) Actual reasonable expenses in moving his advertising sign as provided in subsection (b) of this section.

(B) Actual direct losses of tangible personal property as provided in subsection (c) of this section; and

(C) Actual reasonable expenses in searching for a replacement sign site as provided in subsection (d) of this section.

(2) An owner of an advertising sign who is otherwise eligible for moving payments will not be eligible if he moves his sign to a site in violation of State, Federal or local regulations.

(3) The provisions of this paragraph do not apply separately to an advertising sign owned by and located on of the business or farm being displaced. Those signs considered personal property, including signs eligible under Section 1873.01(m) are to be considered items of the business or farm and included under the provisions of Section 1873.03.

(b) Actual Reasonable Moving Expenses. The owner of a displaced sign may be reimbursed for his actual, reasonable moving expenses in accordance with the provisions of Section 1873.03 (b)(1) and (2).

(c) Actual Direct Losses of Tangible Personal Property. The owner of a sign may be reimbursed for actual direct losses when he is entitled to relocate the sign but does not do so. The amount of such loss will be the lesser of:

(1) The depreciated reproduction cost of the sign as determined by the Department; or

(2) The estimated cost of moving the sign.

(d) Actual Reasonable Expenses in Searching for a Replacement Sign Site.

(1) The owner of a displaced advertising sign may be reimbursed for his actual reasonable expenses in searching for a replacement sign site not to exceed $100.00. Such expenses may include transportation expenses, meals, lodging away from home and the reasonable value of time actually spent in search, including the fees of real estate agents or brokers if actually required and paid for by the displaced sign owner.

(A) Receipted Bills. All expenses claimed except value of time actually spent in search must be supported by receipted bills.

(B) Time Spent in Search. Payment for time actually spent in search shall be based on the applicable hourly wage rate for the person conducting the search but may not exceed $10.00 per hour. A certified statement of the time spent in search and hourly wage rate shall accompany the claim.

HISTORY

1. Amendment filed 3–11–76 as an emergency; effective upon filing (Register 76, No. 11).
2. Certificate of Compliance filed 6–11–76 (Register 76, No. 24).
3. Repealer of subsections (e), (f), (g) and (h) filed 1–18–77 as an emergency; effective upon filing (Register 77, No. 4).
4. Certificate of Compliance filed 5–17–77 (Register 77, No. 21).

§ 1874. Replacement Housing Payments.

(a) General Provisions.

(1) In addition to other payments provided by this Article, eligible individuals and families displaced from their primary residence, including condominiums, cooperative apartments and mobile homes purchased by the State are eligible for replacement housing payments in accordance with this Article.

(2) Displaced individuals or families are not required to relocate to the same occupancy (owner or tenant) status but have other options according to their ownership status and tenure of occupancy as described in Sections 1874.01 to 1874.07, inclusive, of this Article.

(3) Not more than one replacement housing or rental payment shall be made for each dwelling unit except in the case of multi–family occupancy of one dwelling unit as specified in subsection (f) of this Section.

(b) Requirement to Receive Payments.

(1) In addition to the tenure of occupancy provisions the displaced person is otherwise eligible for the appropriate payments when he relocates and occupies a decent, safe and sanitary dwelling within a one–year period beginning on the later of the following dates:

(A) The date on which the owner received final payment for all costs of the acquired dwelling in negotiated settlements; or in the case of condemnation, the date on which the required amount is deposited into court for the benefit of the owner; or

(B) The date on which he actually vacates the acquired real property.

(2) A displaced person who has entered into a contract for the construction or rehabilitation of a replacement dwelling and, for reasons beyond his reasonable control, cannot occupy the replacement dwelling within the time period shown above shall be considered to have purchased and occupied the dwelling as of the date of such contract. The replacement housing payment or rental payment under these conditions shall be deferred until the displaced person has actually occupied the replacement dwelling.

(3) A displaced person who has entered into a legally binding contract for purchase of a replacement dwelling and, for reasons beyond his reasonable control, cannot secure title to and occupancy of the replacement dwelling within the time period shown above shall be considered to have purchased and occupied the dwelling as of the date of such contract. The replacement housing or rental payment under these conditions shall be deferred until title to the premises vests in and the displaced person has actually occupied the replacement dwelling.

(c) Inspection for Decent, Safe and Sanitary Standards. Before making payment to the relocatee the Department shall inspect the replacement dwelling and determine whether it meets the standards for decent, safe and sanitary housing as set forth in Section 1872 of this Article. Such determination by the Department that a dwelling meets the standards for decent, safe and sanitary housing is made solely for he purpose of determining the eligibility of relocated individuals and families for payments under this Article and is not a representation for any other purpose.

(d) Applicants Must Certify Eligibility. Applicants for any payment made under Sections 1874 to 1874.07, inclusive, must certify that, to the best of their knowledge and belief, the replacement dwelling meets the standards for decent, safe and sanitary housing specified in Section 1872 of this Article and that they are eligible for the payment requested.

(e) Ownership of Replacement Dwelling Prior to the Initiation of Negotiations. Any person who has obtained legal ownership of a replacement dwelling prior to the initiation of negotiations on the project and occupies the replacement dwelling after being displaced but within the time limit specified in subsection (b) of this Section is eligible for replacement housing payment if the replacement dwelling meets the requirements of Section 1872 of this Article.

(f) Multiple Occupancy of Same Dwelling Unit. The Department shall determine if the multiple occupancy of a single dwelling unit will require proration of replacement housing payments based on equitable criteria consistent with the intent of the displacees and the Relocation Act (Government Code Sections 7260, et seq.).

(g) Joint Residential and Business Use. Where displaced individuals or families occupy living quarters on the same premises as a displaced business, farm or nonprofit organization, such individuals or families are separate displaced persons for purposes of determining entitlement to relocation payments.

(h) Dependents. A dependent who is residing separate and apart from the person or family providing support, whether such separate residence is permanent or temporary, shall be entitled to payment under these regulations, but such payment shall be limited to the period during which the displaced dependent resides in the replacement dwelling. At the time the dependent vacates that dwelling, no further payment under these regulations shall be made to such person. For the purposes of this paragraph, a "dependent" shall be a person who derives fifty–one percent (51%) or more of his income in the form of gifts from any private person or any academic scholarship or stipend. Full–time students shall be presumed to be dependents but may rebut this presumption by demonstrating that over fifty percent (50%) of their income is derived from sources other than gifts from another person or academic scholarships or stipends.

HISTORY

1. Amendment filed 3–11–76 as an emergency; effective upon filing (Register 76, No. 11).
2. Certificate of Compliance filed 6–11–76 (Register 76, No. 24).
3. Amendment of subsection (f) and new subsection (h) filed 1–18–77 as an emergency; effective upon filing (Register 77, No. 4).
4. Certificate of Compliance filed 5–17–77 (Register 77, No. 21).

§ 1874.01. Replacement Housing Payments to Owner–Occupant for 180 Days or More Who Purchases a Replacement Dwelling.

(a) General.

(1) A displaced owner–occupant of a dwelling may receive additional payments, the combined total of which may not exceed $15,000.00, for the additional cost necessary:

(A) To purchase replacement housing;

(B) To compensate the owner for the loss of favorable financing on his existing mortgage in the financing of replacement housing; and

(C) To reimburse the owner for incidental expenses incident to the purchase of replacement housing when such costs are incurred as specified herein.

(2) The owner–occupant is eligible for such payments when:

(A) He has been in occupancy of the dwelling to be acquired as his primary residence for at least 180 consecutive days immediately prior to and including the date of initiation of negotiations for the parcel; and

(B) The property was acquired from him by the State; and

(C) He purchased and occupied a decent, safe and sanitary dwelling within the time period specified in Section 1874(b).

(b) Purchase Differential Payment.

(1) Amount of Payment. The replacement housing payment is the amount, if any, when added to the amount for which the Department acquired his dwelling, equals the actual cost which the owner is required to pay for a decent, safe, and sanitary dwelling, or the amount determined by the Department as necessary to purchase a comparable replacement dwelling, whichever is less. In the case of a prior owned dwelling, the ac-

tual cost of the prior owned dwelling will b based on the historical cost incurred at the time of its purchase. Any additional cost to bring the prior owned dwelling up to minimum decent, safe and sanitary standards may be included in the historical cost.

(2) Determination of Amount Necessary to Purchase Comparable Replacement Housing. The Department shall determine the amount necessary to purchase comparable replacement housing by any reasonable method the Department finds necessary.

(c) Interest Differential Payment.

(1) General.

(A) Interest differential payments are provided to compensate a displaced person for the increased interest costs he is required to pay for financing a replacement dwelling and shall be allowed only when both of the following conditions are met:

1. The dwelling acquired by the Department was encumbered by a bona fide mortgage which was a valid lien on such dwelling for not less than 180 days prior to the initiation of negotiations; and

2. The mortgage on the replacement dwelling bears a higher effective rate of interest than the stated mortgage interest rate on the acquired dwelling.

As used in this subsection the term "mortgage" shall include those liens as are commonly given to secure advances on, or the unpaid purchase price of, mobile homes or other vehicles, under the laws of the State of California, together with the credit instruments, if any, secured thereby.

(B) The interest differential payment will be based on and limited to the lesser of the following amounts:

1. The present worth of the right to receive the monthly difference in mortgage payments on the existing mortgage using the old and new interest rates; or

2. The present worth of the right to receive the monthly difference in mortgage payments on the new mortgage using the old stated and new interest rates.

(2) Payment Computation. The Department shall determine the amount of the interest differential payment.

(3) Interest Rate of Replacement Dwelling Mortgage. The interest rate of the mortgage on the replacement dwelling to be used in the computation shall not exceed the prevailing interest rate currently charged by mortgage lending institutions in the vicinity.

(4) Discount Rate. The present worth shall be based on a discount rate equal to the prevailing interest rate paid on savings deposits by commercial banks in the general area in which the acquired dwelling is located.

(5) Points and Loan Fees.

(A) To the amount of the increased payment shall be added the following:

1. The amount actually paid, if any, as points by the eligible displaced owner in the purchase of the replacement dwelling, not to exceed an amount calculated by multiplying the prevailing point rate by the amount of the eligible portion of the mortgage on the replacement dwelling, or the probable replacement cost of the acquired dwelling as determined by the Department whichever is less. A "point" is defined as 1% of the outstanding mortgage balance.

2. The amount actually paid, if any, as loan origination or service fees by the eligible displaced owner in the purchase of the replacement dwelling, not to exceed one percent of either the mortgage on the acquired dwelling, or 1% of the probable replacement cost of the acquired dwelling as determined by the Department, whichever is less.

(6) Variable Rate Mortgages.

(A) The interest rate of the mortgage on the acquired property shall be deemed to be that stated in the mortgage except that in those mortgages wherein the lender has the lawful right to make periodic adjustments in the interest rate, the interest rate in effect at the time of acquisition by the Department shall be used in the increased interest cost computation.

(B) The interest rate of the mortgage on the replacement dwelling shall be deemed to be the rate which will be applied to determine the first periodic payment of principal and interest on said mortgage.

(d) Incidental Expenses.

(1) Amount of Payment. The incidental expenses payment is the amount necessary to reimburse the homeowner for the actual costs incurred by him incident to the purchase of the replacement dwelling, but not for prepaid expenses. Such expenses shall be reasonable and legally required or customary in the community. Such costs may include, but are not limited to, the following items where actually paid by the displaced homeowner:

(A) Legal, closing and related costs including title search, preparing conveyance contracts, notary fees, surveys, preparing drawings or plats and charges paid incident to recordation;

(B) Lenders, Federal Housing Administration or Veterans Administration appraisal fee;

(C) Federal Housing Administration or Veterans Administration application fee;

(D) Certification of structural soundness when required by lender, Federal Housing Administration or Veterans Administration;

(E) Credit report;

(F) Owner's title policy or abstract of title;

(G) Escrow agent's fee;

(H) State real estate transfer tax;

(I) Sales or transfer taxes;

(J) No fee, cost, charge or expense is reimbursable as an incidental expense when it is determined to be a part of the debt service, or finance charge under the Truth in Lending Act, Title I, Public Law 90–321, and Regulation Z issued pursuant thereto by the Board of Governors of the Federal Reserve System.

(e) Owner Retention of Dwelling. Where an owner–occupant retains his dwelling, the replacement housing payment shall be computed in accordance with the appropriate paragraph below:

(1) Dwelling is Decent, Safe and Sanitary. The payment, if any, shall be the amount by which the costs to relocate the retained dwelling exceeds the appraised value of the dwelling.

The costs to relocate may include the reasonable costs of acquiring a new site and other expenses incident to retaining, moving the dwelling and restoring it to a condition comparable to that before the move.

(2) Dwelling is Not Decent, Safe and Sanitary. The payment shall be computed as shown above except that the costs to cure the decent, safe and sanitary deficiencies shall be included in the costs to relocate.

(3) Limitations. The payment computed under Paragraphs (1) or (2) of this subsection may not exceed the amount which the owner would have obtained under subsection (b)(1) of this Section or, if no comparables are available on which to make such a determination, the cost of a new dwelling adequate to accommodate the displaced person.

History

1. Amendment of subsection (d)(1) filed 1–18–77 as an emergency; effective upon filing (Register 77, No. 4). For prior history, see Register 76, No. 24.
2. Certificate of Compliance filed 5–17–77 (Register 77, No. 21).
3. Amendment of subsection (c)(1) filed 10–18–77; effective thirtieth day thereafter (Register 77, No. 43).

§ 1874.02. Rental Differential Payment to Owner–Occupant for 180 Days or More Who Rents a Replacement Dwelling.

(a) General. An owner–occupant eligible for a replacement housing payment under Section 1874.01(a) who elects to rent a replacement dwelling is eligible for a rental differential payment not to exceed $4,000.00.

(b) Computation and Disbursement of Payment. The payment shall be computed and disbursed in accordance with the provisions of Section 1874.05(b), (c), and (d) except that:

(1) the present rental rate shall be economic rent as determined by market data; and

(2) the payment may not exceed the maximum amount which he would have received had he elected to receive a purchase differential payment under Section 1874.01(b).

HISTORY

1. Amendment filed 3–11–76 as an emergency; effective upon filing (Register 76, No. 11).
2. Certificate of Compliance filed 6–11–76 (Register 76, No. 24).
3. Amendment of subsection (b) filed 1–18–77 as an emergency; effective upon filing (Register 77, No. 4).
4. Certificate of Compliance filed 5–17–77 (Register 77, No. 21).

§ 1874.03. Replacement Housing Payment to Owner–Occupant for Less Than 180 Days but Not Less Than 90 Days Who Purchases a Replacement Dwelling.

(a) General. A displaced owner–occupant otherwise eligible under Section 1874.01 (a) except that he has owned and occupied the dwelling for less than 180 days but not less than 90 days may receive an amount, not to exceed $4,000.00, to enable him to make a downpayment on the purchase of a replacement dwelling and reimbursement for actual expenses incident to such purchase; or for additional costs to relocate his retained dwelling in accordance with the following.

(b) Computation of Downpayment and Incidental Expenses.

(1) The amount of the downpayment shall be determined by the Department as the amount required as a typical downpayment on a comparable dwelling if such purchase was financed with a conventional loan, plus the amount required to be paid by the purchaser as points and/or an origination or loan services fee (not to exceed one percent of the probable replacement cost of the acquired dwelling as determined by the Department or one percent of the loan on the replacement dwelling whichever is less), if such fees are normal to real estate transactions in the area.

(2) The expenses incident to the purchase of replacement housing as provided in Section 1874.01(d);

(3) Upon purchase and occupancy of a decent, safe and sanitary dwelling by the relocatee within the time limits specified by Section 1874(b) the relocatee may be reimbursed:

(A) The amount of the downpayment determined in subsection (b)(1) of this Section and the eligible incidental expenses if the total amount of both does not exceed $2,000.00, or if more than $2,000.00;

(B) $2,000.00, plus 50 percent of the amount in excess of $2,000.00 providing the relocatee contributes 50 percent of the amount in excess of $2,000.00. In no event may the combined payments exceed $4,000.00.

(4) The full amount of the downpayment must be applied to the purchase price and eligible incidental costs, such downpayment and incidental costs claimed must be shown in the closing statement.

(c) Owner Retention of Dwelling. The owner may retain his dwelling and the replacement housing payment, if any, will be determined in accordance with the provisions of Section 1874.01(e)(1) and (2) but in no event will such payment exceed $4,000.00.

HISTORY

1. Amendment filed 3–11–76 as an emergency; effective upon filing (Register 76, No. 11).
2. Certificate of Compliance filed 6–11–76 (Register 76, No. 24).

§ 1874.04. Rental Differential Payment to Owner–Occupant for Less Than 180 Days but Not Less Than 90 Days Who Rents a Replacement Dwelling.

(a) General. A displaced owner–occupant otherwise eligible under Section 1874.01 (a) except that he has owned and occupied the dwelling for less than 180 days but not less than 90 days and elects to rent a replacement dwelling is eligible for a rental differential payment not to exceed $4,000.00.

(b) Computation and Disbursement of Payment. The payment will be computed and disbursed in accordance with the provisions of Section 1874.05 (b), (c) and (d) except that the present rental rate shall be economic rent as determined by market data.

HISTORY

1. Amendment filed 3–11–76 as an emergency; effective upon filing (Register 76, No. 11).
2. Certificate of Compliance filed 6–11–76 (Register 76, No. 24).

§ 1874.05. Rental Differential Payment to Tenant–Occupant for Not Less Than 90 Days Who Rents a Replacement Dwelling.

(a) General. A displaced tenant is eligible for a rental differential payment not to exceed $4,000.00, if:

(1) He has been occupying the dwelling to be acquired as his primary residence for at least 90 consecutive days immediately prior to and including the date of initiation of negotiations; and

(2) The property was subsequently acquired; and

(3) He rented and occupied a decent, safe and sanitary dwelling within the time period specified in Section 1874(b);

(b) Computation of Payment. (1) The payment, not to exceed $4,000.00, shall be determined by subtracting forty–eight (48) times the base monthly rental from:

(A) Forty–eight (48) times the monthly amount which the tenant actually pays for a replacement dwelling, or if lesser;

(B) Forty–eight (48) times the monthly amount determined by the Department as necessary to rent a comparable replacement dwelling.

(c) Department to Determine Method. The Department shall determine the amount necessary to rent a comparable replacement dwelling.

(d) Disbursement of Rental Differential Payments. (1) Rental differential payments shall be paid in a lump sum, monthly) or at other intervals determined as appropriate by the Department.

(2) If an installment payment is determined appropriate, the tenant must certify to the Department prior to receiving each installment payment that he is occupying decent, safe and sanitary housing. In the case where installment payments are being made to a dependent, he must certify that he is actually occupying the replacement property as specified in Section 1874(h).

HISTORY

1. Amendment filed 3–11–76 as an emergency; effective upon filing (Register 76, No. 11).
2. Certificate of Compliance filed 6–11–76 (Register 76, No. 24).
3. Amendment of subsections (b) and (d) filed 1–18–77 as an emergency; effective upon filing (Register 77, No. 4).
4. Certificate of Compliance filed 5–17–77 (Register 77, No. 21).

§ 1874.06. Replacement Housing Payment to Tenant–Occupant for Not Less Than 90 Days Who Purchases a Replacement

(a) General. A displaced tenant eligible for a rental replacement housing payment under Section 1874.05 (a) who elects to purchase a replacement dwelling is eligible to receive an amount, not to exceed $4,000.00, to enable him to make a downpayment on the purchase of a comparable replacement dwelling including the expenses incident to such purchase.

(b) Computation of Payment. The payment shall be computed in accordance with the provisions of Section 1874.03 (b).

HISTORY

1. Amendment of subsection (a) filed 1–18–77 as an emergency; effective upon filing (Register 77, No. 4).
2. Certificate of Compliance filed 5–17–77 (Register 77, No. 21).

§ 1874.07. Replacement Housing Payment to Tenant of a Sleeping Room for Not Less Than 90 Days.

(a) General. A displaced tenant of a sleeping room who is eligible for a replacement housing payment under Section 1874.05 (a) may receive an amount not to exceed $4,000.00 as a comparable replacement dwelling in accordance with the following paragraphs.

(b) Rental Differential Payment.

(1) The payment, not to exceed $4,000.00, shall be computed in accordance with the provisions of Section 1874.05(b).

(2) The Department's determination of the amount necessary to rent and the disbursement of the rental differential payments shall be as provided in Section 1874.05 (c) and (d).

(c) Downpayment. The downpayment amount, including the expenses incident to purchase of the comparable replacement dwelling are to be computed in accordance with the provisions of Section 1874.03 (b).

HISTORY

1. Amendment filed 3–11–76 as an emergency; effective upon filing (Register 76, No. 11).
2. Certificate of Compliance filed 6–11–76 (Register 76, No. 24).
3. Amendment of subsections (b)(1) and (b)(2) filed 1–18–77 as an emergency; effective upon filing (Register 77, No. 4).
4. Certificate of Compliance filed 5–17–77 (Register 77, No. 21).

§ 1875. Mobile Homes. General.

(a) Acquisition of Mobile Homes. The Department may purchase mobile homes where:

(1) The structural condition of the mobile home is such that it cannot be moved without substantial damage or unreasonable cost; or

(2) The mobile home is owner–occupied as a primary residence and is not a decent, safe and sanitary dwelling unit as defined in Section 1872 (c) of this Article and the decent, safe and sanitary deficiencies cannot be remedied at a reasonable cost.

(3) The mobile home is owner–occupied as a primary residence, and there are no adequate mobile home sites available in which to relocate the displacee's mobile home.

(b) Partial Acquisition of Mobile Home Park. Where the Department determines that a sufficient portion of a mobile home park is taken to justify the operator of such park to move his business the owners and occupants of the mobile home dwellings not within the actual taking but who are forced to move shall be eligible to receive the same payments as though their dwellings were within the actual taking.

(c) Mobile Homes as Replacement Dwellings. A mobile home may be considered a replacement dwelling provided:

(1) The mobile home meets standards of decent, safe and sanitary as provided in Section 1872 (c);

(2) The mobile home is placed in a fixed location:

(A) In a mobile home park which is licensed and operating under State law; or

(B) In a mobile home subdivision wherein the displaced person owns the lot on which the mobile home is placed; or

(C) On real property owned or leased by the displaced person in other than a mobile home subdivision, provided such placement is in accordance with State and local laws or ordinances and provided such placement was made under permit from the State or local agency.

(d) Computation on Next Highest Type. When a comparable mobile home is not available it will be necessary to calculate the replacement housing payment on the basis of the next highest type of dwelling that is available and meets the applicable requirements and standards, i.e., a higher type mobile home or a conventional dwelling.

(1) "Not available" as used in this subsection includes, but is not limited to, those cases where mobile homes cannot be relocated in mobile home parks within a reasonable distance from the place of dislocation because of lack of available spaces or because of the standards and rules of the mobile home parks where spaces are available.

(e) General Provisions. The general provisions for moving expenses and replacement housing payments of Sections 1873.01 and 1874 of this Article are also applicable to owners and tenants of mobile homes.

HISTORY

1. Amendment filed 3–11–76 as an emergency; effective upon filing (Register 76, No. 11).
2. Certificate of Compliance filed 6–11–76 (Register 76, No. 24).

§ 1875.01. Moving Expenses for Mobile Homes.

(a) General. The eligibility requirements of Section 1873.01 (a) and the provisions of Sections 1873.01 and 1873.02 are applicable to owners and occupants displaced from a mobile home.

(b) Owners of Mobile Homes. (1) The owner of a mobile home may be reimbursed for the actual reasonable costs of moving the mobile home or other personal property in accordance with the provisions of Section 1873.02 (b); or

(2) If the owner occupies the mobile home, whether the mobile home is moved or not, he may elect to be reimbursed in accordance with Section 1873.02 (c).

(3) The cost of moving a mobile home on an actual cost basis may include the cost of detaching and reattaching fixtures and appliances where applicable. When required at the replacement site, the Department may include, as moving expenses, necessary costs of skirting, awnings, etc.

(c) Mobile Home Tenants. Tenants who are displaced from a mobile home may elect to be reimbursed for moving their personal property on an actual reasonable cost basis as specified in Section 1873.02 (b) or in accordance with Section 1873.02 (c).

HISTORY

1. Amendment of subsections (b) and (c) filed 1–18–77 as an emergency; effective upon filing (Register 77, No. 4).
2. Certificate of Compliance filed 5–17–77 (Register 77, No. 21). awnings, etc.

§ 1875.02. Replacement Housing Payments—Mobile Homes.

(a) The owner–occupant of a mobile home and site who purchases both a replacement dwelling and site shall be provided a replacement housing payment in accordance with Sections 1874.01 or 1874.03, as appropriate. If the owner–occupant rents both a replacement dwelling and site, he shall be provided a payment in accordance with Sections 1874.02 or 1874.04, as appropriate.

(b) The owner–occupant of a mobile home and site who purchases a replacement dwelling and rents a replacement site shall be provided a payment in accordance with Sections 1874.01 and 1874.02. The payment shall be limited to the lesser of:

(1) The amount as determined by the Department as necessary to purchase a conventional replacement dwelling; and

(2) The amount as determined by the Department as necessary to purchase a replacement mobile home (in accordance with Section 1874.01) plus the amount necessary to rent a replacement site (in accordance with Section 1874.02) to a maximum of $15,000.

(3) If an owner–occupant for over 90 days but less than 180 days, the owner–occupant of a mobile home would only be eligible for payments provided by Sections 1874.03 or 1874.04 to a maximum of $4,000.

(c) The owner–occupant who owns a site from which he moves a mobile home shall be provided a replacement housing payment under Sections 1874.01 or 1874.03 if he purchases a replacement site and under Sections 1874.02 or 1874.04 if he rents a replacement site.

(d) The owner–occupant of a mobile home which is acquired and who rents the acquired site shall be provided payment as follows:

(1) If a mobile home is not available, the amount required to purchase a conventional replacement dwelling (in accordance with Section 1874.01); and

(2) The amount necessary to purchase a replacement mobile home (in accordance with Section 1874.01) plus the amount necessary to lease, rent, or make a down payment on a replacement site (in accordance with Sections 1874.02 and 1874.03) to a maximum of $15,000.

(3) If an owner–occupant of a mobile home for more than 90 days but less than 180 days, the owner–occupant shall only be eligible for payments provided by Sections 1874.03 or 1874.04, to a maximum of $4,000.

(4) If he elects to rent a replacement mobile home and site, the amount required to do so computed in accordance with Section 1874.02.

(e) The tenant–occupant who rents a mobile home and site shall be provided payments in accordance with Sections 1874.05 and 1874.06.

(f) Similar principles shall be applied to other possible combinations of ownership and tenancy upon which a claim for payment might be based.

HISTORY

1. Amendment filed 1–18–77 as an emergency; effective upon filing (Register 77, No. 4). For prior history, see Register 76, No. 24.
2. Certificate of Compliance filed 5–17–77 (Register 77, No. 21).
3. Amendment of subsection (d)(4) filed 10–18–77; effective thirtieth day thereafter (Register 77, No. 43).

§ 1875.03. Replacement Housing Payments for Owner–Occupants of Mobile Homes for Less Than 180 Days but More Than 90 Days.

HISTORY

1. Repealer filed 1–18–77 as an emergency; effective upon filing (Register 77, No. 4). For prior history, see Register 76, No. 24.
2. Certificate of Compliance filed 5–17–77 (Register 77, No. 21).

§ 1875.04. Replacement Housing Payments to Tenants of Mobile Homes for 90 Days or More.

HISTORY

1. Repealer filed 1–18–77 as an emergency; effective upon filing (Register 77, No. 4). For prior history, see Register 76, No. 24.
2. Certificate of Compliance filed 5–17–77 (Register 77, No. 21).

§ 1876. Housing Provided As a Last Resort—General.

(a) When it is determined that adequate replacement housing is not available, or cannot otherwise be made available, the Department shall take steps to provide comparable replacement housing. Such steps shall include, but not be limited to, the following:

(1) Provide for payments over and above the limits established in this chapter which will put the comparable replacement housing that is available within the financial means of the displacees. Under no circumstances will a rental subsidy exceed a period of 48 months.

(2) Provide for the purchase or construction of comparable replacement housing which can be made available to the displacee, within his financial means and reasonably accessible to his place of employment.

NOTE: Authority cited: Sections 7267.8 and 7268, Government Code.

HISTORY

1. New section filed 3–11–76 as an emergency; effective upon filing (Register 76, No. 11).
2. Certificate of Compliance filed 6–11–76 (Register 76, No. 24).
3. Amendment filed 1–18–77 as an emergency; effective upon filing (Register 77, No. 4).
4. Certificate of Compliance filed 5–17–77 (Register 77, No. 21). (Register 76, No. 11).

§ 1877. Temporary Moves for Rehabilitation.

(a) If temporary displacement is required because of a program of residential rehabilitation the occupants displaced may be provided at State expense with the following:

(1) Temporary housing in motels or apartments. Displacee shall continue to be liable for payment of rent on the unit from which they have been temporarily displaced.

(2) Transportation of displacees.

(3) Moving of personal property.

(4) Storage of personal property.

(5) Gas and electricity in temporary residence.

(6) Telephone transfers.

(7) If displacees are moved from housekeeping units to accommodations without kitchens meals shall be provided. The Department may contract with restaurants, or at its option the Department may provide a meal allowance of $12.00 per day for each displacee. The meal allowance may be paid in advance when deemed appropriate by the Department.

NOTE: Authority cited: Section 8169.2, Government Code. Reference: Sections 41397 and 41557, Health and Safety Code.

HISTORY

1. New section filed 1–20–78 as an emergency; effective upon filing (Register 78, No. 3). For history of former Section 1877, see Registers 77, No. 4, 77, No. 21 and 77, No. 43.
2. Certificate of Compliance filed 5–22–78 (Register 78, No. 21).

§ 1878. Permanent Moves for Rehabilitation.

In any program of residential rehabilitation within the "core area" of Sacramento as defined in Section 8160.1 of the Government Code, permanently displaced persons who are eligible for relocation assistance under Section 41397 of the Health and Safety Code shall receive relocation assistance in conformance with Sections 1870 through 1876 of this subchapter.

NOTE: Authority cited: Section 8169.2, Government Code. Reference: Sections 41397 and 41557, Health and Safety Code.

HISTORY

1. New section filed 2–6–78 as an emergency; effective upon filing (Register 78, No. 6).
2. Certificate of Compliance filed 5–22–78 (Register 78, No. 21).

Subchapter 7. Office of Procurement

Article 1. Rules for Prequalification of Vendors

§ 1890. Uniform Standards for Prequalification of Vendors.

(a) As used in this section

(1) "Vendor" means manufacturer, fabricator, wholesale distributor, broker or other persons and firms regularly engaged in the sale of materials, supplies or equipment.

(2) "Standard specification" means those purchasing standards established by the Director of General Services under authority of Public Contract Code Section 10307.

(3) "Product" means unmanufactured, partially manufactured or finished materials, supplies and equipment.

(4) "Bid invitation" means those bid invitations issued by the Department of General Services as required in Public Contract Code Section 10302.

(5) "Accounts" means businesses or governmental jurisdictions other than State agencies to whom applicant vendors are regularly supplying the product offered to the State.

(b) Vendors seeking to prequalify to receive bid invitations shall present evidence that they have the ability, resources, and facilities to adequately supply the State. The following tests shall be applied by the Department of General Services in considering vendor applications for prequalification.

(1) Requirements of the State. Lists of prequalified vendors shall be established where evidence exists that the State requires products competitively offered by applicant vendor. If, during the twelve (12) months preceding application, the aggregate purchases by the State of products substantially similar to those competitively offered are more than five thousand dollars ($5,000) and, during this same period, any single purchase exceeded one thousand dollars ($1,000), a list of prequalified vendors shall be established.

(2) Geographic Limits. Vendors may be prequalified to receive bid invitations for purchases for delivery within those market areas of the State in which the vendor regularly conducts his business. If a vendor applies for prequalification outside the normal market area in which his offices, warehouses or other facilities are located, he shall show evidence of satisfactory service to accounts located within each of the market areas for which he is requesting prequalification.

(3) Compliance With Standards. Where standard specifications for products have been established by the Department, the vendor shall present evidence that the product offered complies with such standards.

(4) Experience. The vendor shall show evidence of adequate experience in selling and providing post–purchase service to accounts with requirements similar to those of the State. Vendors with less than two years of experience in selling the products offered shall provide evidence of

satisfactory service to other accounts purchasing the product offered in quantities and qualities similar to that normally required by the State.

(5) Inventories. The vendor shall have readily available to him an inventory of new products and, if applicable, replacement or repair parts for the products offered and such inventories shall be of sufficient size and scope to permit timely delivery of the products and parts in compliance with the normal requirements of the State within the market areas for which the vendor requests prequalification. If such readily available inventories are less than the normal annual State requirements for the product offered within the geographic area of prequalification, the vendor shall show evidence of his ability to augment these inventories from other sources adequate to assure the timely delivery of these products.

(6) Post–Purchase Service and Technical Assistance. For products of a type normally requiring the vendor to employ or make available trained or licensed personnel to provide post–purchase service and technical assistance, the vendor shall show evidence that such personnel will be readily available on a timely basis to the State at such locations as required by the State.

(7) Licenses. The vendor shall hold all licenses and permits required by law to furnish materials, or to perform services required under the contract or purchase order.

(8) Fabrication to State Specifications. When the product offered requires manufacture or fabrication to specifications established by the State, the vendor shall show that facilities and personnel capable of manufacturing or fabricating the product in compliance with the State specification are readily available to him.

(c) Vendors seeking prequalification to receive bid notices shall complete a standard application form and questionnaire prescribed and furnished by the Department of General Services. The Department of General Services may also require such additional or supplemental information as it deems necessary.

(d) The Department of General Services may require any vendor to resubmit evidence of his qualifications at such times, and under such conditions as it may require. The question whether a particular bidder is a "responsible bidder," within the requirements of Public Contract Code Section 10301, involves an evaluation of the bidder's experience, facilities, reputation, financial resources, and other factors existing at the time of contract award. Prequalification of a vendor to be placed on a prequalified vendor list shall not foreclose the State from determining that the vendor is not a "responsible bidder" within the statutory requirements at the time of contract award for purposes of that award.

NOTE: Authority cited: Sections 10303 and 10315, Public Contract Code. Reference: Sections 10301, 10302, 10303 and 10307, Public Contract Code.

HISTORY

1. New article (§§ 1890 and 1891) filed 9–13–55 as an emergency; effective upon filing (Register 55, No. 14).
2. Amendment filed 3–11–65 as procedural and organizational; effective upon filing (Register 65, No. 4).
3. Amendment filed 12–13–67; effective thirtieth day thereafter (Register 67, No. 50).
4. Amendment filed 12–23–76; effective thirtieth day thereafter (Register 76, No. 52).
5. Editorial correction of NOTE filed 10–22–82 (Register 82, No. 43).
6. Repealer of subsection (b) and relettering of subsections (c)–(e) to subsections (b)–(d) filed 10–22–82 by OAL pursuant to Government Code Section 11349.7(j) (Register 82, No. 43).
7. Amendment of subsections (b) and (d) filed 3–4–83; effective thirtieth day thereafter (Register 83, No. 10).
8. Editorial correction of NOTE filed 3–8–84 (Register 84, No. 10).
9. Change without regulatory effect of subsections (a)(2), (a)(4) and (d) filed 4–14–87; operative 5–14–87 (Register 87, No. 16).

§ 1891. Removal of Names from Bidders Lists.

NOTE: Authority cited: Sections 10303 and 10315, Public Contract Code. Reference: Section 10303, Public Contract Code.

HISTORY

1. Amendment filed 3–11–65 as procedural and organizational; effective upon filing (Register 65, No. 4).
2. Amendment of subsection (a) filed 4–7–78; effective thirtieth day thereafter (Register 78, No. 14).
3. Repealer filed 10–22–82 by OAL pursuant to Government Code Section 11349,7(j) (Register 82, No. 43).
4. Editorial correction of NOTE filed 3–8–84 (Register 84, No. 10).

Article 2. Purchases on Behalf of Local Agencies

§ 1895. General Provisions.

NOTE: Authority and reference cited: Section 10324, Public Contract Code.

HISTORY

1. New Article 2 (Sections 1895, 1895.1 through 1895.16) filed 10–7–64; effective thirtieth day thereafter (Register 64, No. 20).
2. Amendment filed 12–23–76; effective thirtieth day thereafter (Register 76, No. 52).
3. Editorial correction of NOTE filed 10–22–82 (Register 82, No. 43).
4. Repealer filed 10–22–82 by OAL pursuant to Government Code Section 11349.7(j) (Register 82, No. 43).
5. Editorial correction of NOTE filed 3–8–84 (Register 84, No. 10).

§ 1895.1. Authorization of Local Governing Body.

There shall be attached to every Local Agency Purchase Request a certified copy of the resolution, order, motion, or ordinance of the local governing body by law having power to purchase, authorizing submission of the purchase request by the official signing the request on behalf of the local agency.

NOTE: Authority and reference cited: Section 10324, Public Contract Code.

HISTORY

1. Editorial correction of NOTE filed 10–22–82 (Register 82, No. 43).
2. Amendment filed 3–4–83; effective thirtieth day thereafter (Register 83, No. 10).
3. Editorial correction of NOTE filed 3–8–84 (Register 84, No. 10).

§ 1895.2. Charter Cities.

Cities governed by a charter specifying detailed purchasing procedures shall follow the charter requirements, and may not avail themselves of the purchasing services of the State Department of General Services. Chartered cities submitting Local Agency Purchase Requests shall attach to each request a certification, signed by or on behalf of the city attorney, advising that the requested purchase by the State Department of General Services does not conflict with the provisions of the city charter.

NOTE: Authority and reference cited: Section 10324, Public Contract Code.

HISTORY

1. Editorial correction of NOTE filed 10–22–82 (Register 82, No. 43).
2. Amendment filed 3–4–83; effective thirtieth day thereafter (Register 83, No. 10).
3. Editorial correction of NOTE filed 3–8–84 (Register 84, No. 10).

§ 1895.3. Submission of Requests.

NOTE: Authority and reference cited: Section 10324, Public Contract Code.

HISTORY

1. Editorial correction of NOTE filed 10–22–82 (Register 82, No. 43).
2. Repealer of last sentence filed by OAL 10–22–82 pursuant to Government Code Section 11349.7(j). (Register 82, No. 43).
3. Repealer filed 3–4–83; effective thirtieth day thereafter (Register 83, No. 10).
4. Editorial correction of NOTE filed 3–8–84 (Register 84, No. 10).

§ 1895.4. Funding and Payment to Vendor.

NOTE: Authority and reference cited: Section 10324, Public Contract Code.

HISTORY

1. Editorial correction of NOTE filed 10–22–82 (Register 82, No. 43).
2. Repealer filed 10–22–82 by OAL pursuant to Government Code Section 11349.7(j) (Register 82, No. 43).
3. Editorial correction of NOTE filed 3–8–84 (Register 84, No. 10).

§ 1895.5. Specifications Not to Restrict Competition.

To be acceptable to the Department of General Services, requests for restrictive specifications shall include a statement that the local agency has determined that the article of the specified brand or trade name is the only article which properly meets the needs of the agency, and shall include sufficient factual data in support of such local agency determination to afford the Department of General Services a reasonable basis for

concurrence in such local agency determination. Requests containing restrictive specifications not adequately supported by written justification will not be processed by the Department of General Services.

NOTE: Authority and reference cited: Section 10324, Public Contract Code.

HISTORY

1. Editorial correction of NOTE filed 10–22–82 (Register 82, No. 43).
2. Amendment filed 3–4–83; effective thirtieth day thereafter (Register 83, No. 10).
3. Editorial correction of NOTE filed 3–8–84 (Register 84, No. 10).

§ 1895.6. Local Bidders to Receive Bid Invitations.

Local agencies may indicate on a separate sheet attached to the local agency request form any local bidders which the requesting agency wishes to receive bid invitations. All listed local bidders shall receive bid invitations.

NOTE: Authority and reference cited: Section 10324, Public Contract Code.

HISTORY

1. Editorial correction of NOTE filed 10–22–82 (Register 82, No. 43).
2. Amendment filed 3–4–83; effective thirtieth day thereafter (Register 83, No. 10).
3. Editorial correction of NOTE filed 3–8–84 (Register 84, No. 10).

§ 1895.7. F. O. B. Point—Destination.

NOTE: Authority and reference cited: Section 10324, Public Contract Code.

HISTORY

1. Editorial correction of NOTE filed 10–22–82 (Register 82, No. 43).
2. Repealer filed 3–4–83; effective thirtieth day thereafter (Register 83, No. 10).
3. Editorial correction of NOTE filed 3–8–84 (Register 84, No. 10).

§ 1895.8. Cash Discount Considered in Bid Evaluation.

Discounts involving discount periods of less than 20 days shall not be included in the calculation of low bid.

NOTE: Authority cited: Section 10324, Public Contract Code. Reference: Section 10324, Public Contract Code.

HISTORY

1. Amendment filed 4–21–82; effective thirtieth day thereafter (Register 82, No. 17).
2. Editorial correction of NOTE filed 10–22–82 (Register 82, No. 43).
3. Amendment filed 3–4–83; effective thirtieth day thereafter (Register 83, No. 10).
4. Editorial correction of NOTE filed 3–8–84 (Register 84, No. 10).

§ 1895.9. Specifications Development and Sample Analysis.

Inspections or specifications development requiring expert personnel or special equipment may be undertaken by the Department of General Services and Office of Procurement staff only if the local agency requests such service.

If, in the opinion of the Department of General Services, such service is required to consummate a requested purchase and the cost of the service required exceeds the normal indirect costs for similar purchases, the Department of General Services shall notify the requesting agency of this prior to processing the purchase request. No service of this type shall be undertaken without prior concurrence of the local requesting agency. An additional charge for this service based on costs to the Department of General Services (manhours, travel, laboratory or inspection fees) shall be made.

NOTE: Authority and reference cited: Section 10324, Public Contract Code.

HISTORY

1. Editorial correction of NOTE filed 10–22–82 (Register 82, No. 43).
2. Amendment filed 3–4–83; effective thirtieth day thereafter (Register 83, No. 10).
3. Editorial correction of NOTE filed 3–8–84 (Register 84, No. 10).

§ 1895.10. Cost of Service—Charge to Local Agency.

(a) The Department of General Services shall charge the local agency a percentage of the purchase price which shall be computed to be the average of the costs incurred in making purchases for that local agency. When it is necessary to assume extra costs for such items as consultant services, special equipment, lab fees, or similar non–routine costs, the average costs shall not be added to the purchase cost for purposes of determining whether the State can purchase at a lower price than can the local agency.

(b) If a local agency withdraws its request prior to the date the Office of Procurement mails bids or if the Office of Procurement finds that it cannot, for some reason, accept the request for processing, no charge shall be made except for special services rendered in accordance with the preceding sections. Full charge shall be made for the Office of Procurement costs if the local agency withdraws its request subsequent to bid mailing regardless of whether a purchase order is issued.

NOTE: Authority and reference cited: Section 10324, Public Contract Code.

HISTORY

1. Editorial correction of NOTE filed 10–22–82 (Register 82, No. 43).
2. Amendment filed 3–4–83; effective thirtieth day thereafter (Register 83, No. 10).
3. Editorial correction of NOTE filed 3–8–84 (Register 84, No. 10).

§ 1895.11. Delivery—Date Normally Specified.

NOTE: Authority and reference cited: Section 10324, Public Contract Code.

HISTORY

1. Editorial correction of NOTE filed 10–22–82 (Register 82, No. 43).
2. Repealer filed 3–4–83; effective thirtieth day thereafter (Register 83, No. 10).
3. Editorial correction of NOTE filed 3–8–84 (Register 84, No. 10).

§ 1895.12. Confirmation of Purchase Request and Inquiries Regarding Status.

NOTE: Authority and reference cited: Section 10324, Public Contract Code.

HISTORY

1. Editorial correction of NOTE filed 10–22–82 (Register 82, No. 43).
2. Repealer of last sentence filed 10–22–82 by OAL pursuant to Government Code Section 11349.7(j) (Register 82, No. 43).
3. Repealer filed 3–4–83; effective thirtieth day thereafter (Register 83, No. 10).
4. Editorial correction of NOTE filed 3–8–84 (Register 84, No. 10).

§ 1895.13. Final Authorization to Purchase.

It shall be the sole responsibility of the local agency to determine whether the requested purchase can be made by the State "upon the same terms, conditions and specifications at a price lower than the local agency can obtain through its normal purchasing procedures" within the limitations of Public Contract Code Section 10324. In order that the local agency may be in a position to make this determination, the State shall furnish the local agency with a complete copy of the Invitation for Bid, showing all terms, conditions and specifications. Upon bid opening, the State shall advise the local agency of the lowest responsible bid price received and shall request direction from the local agency as to whether to purchase. The purchase shall not be completed unless the local agency then promptly replies and so directs, by telegram or otherwise, in writing.

Two complete copies of the Purchase Order shall be sent to the local agency promptly upon issuance by the Office of Procurement, in order that the local agency may be in a position to properly audit and inspect the purchase.

NOTE: Authority and reference cited: Section 10324, Public Contract Code.

HISTORY

1. Amendment filed 12–23–76; effective thirtieth day thereafter (Register 76, No. 52).
2. Editorial correction of NOTE filed 10–22–82 (Register 82, No. 43).
3. Amendment filed 3–4–83; effective thirtieth day thereafter (Register 83, No. 10).
4. Editorial correction of NOTE filed 3–8–84 (Register 84, No. 10).
5. Change without regulatory effect filed 4–14–87; operative 5–14–87 (Register 87, No. 16).
6. Editorial correction of Authority and Reference cites (Register 95, No. 6).

§ 1895.14. Cost Information.

On request, the State shall distribute cost information to local agencies in two ways, (1) a list of selected non–contract "indicator" commodities covering a range of product areas shall be periodically compiled so that local agencies have some insight into prices obtained by the State and (2) annual State contract bid invitations and notifications which contain cost and specification information adequate for local agency evaluation.

NOTE: Authority cited: Section 10324, Public Contract Code. Reference: Section 10325, Public Contract Code.

HISTORY

1. Editorial correction of NOTE filed 10–22–82 (Register 82, No. 43).
2. Amendment filed 3–4–83; effective thirtieth day thereafter (Register 83, No. 10).
3. Editorial correction of NOTE filed 3–8–84 (Register 84, No. 10).

§ 1895.15. Emergency Purchases—Justification.

NOTE: Authority cited: Section 14814, Government Code. Reference: Section 14809, Government Code.

HISTORY

1. Editorial correction of NOTE filed 10–22–82 (Register 82, No. 43).
2. Repealer filed 10–22–82 by OAL pursuant to Government Code Section 11349.7(j) (Register 82, No. 43).

§ 1895.16. Late or Defective Deliveries.

After issuance of the Purchase Order by the State Office of Procurement to the vendor, the State Office of Procurement shall have no further responsibility with regard to the purchase. It shall be the responsibility of the local agency to deal directly with the vendor concerning any late or defective delivery.

NOTE: Authority cited: Section 10329, Public Contract Code. Reference: Section 10324, Public Contract Code.

HISTORY

1. Editorial correction of NOTE filed 10–22–82 (Register 82, No. 43).
2. Editorial correction of NOTE filed 3–8–84 (Register 84, No. 10).

Subchapter 8. Office of Small Business Procurement and Contracts

Article 1. General Provisions

§ 1896. Purpose of Subchapter.

The purpose of this subchapter is to set forth the rules for applying the small business and the non–small business subcontractor preferences; and the rules, roles, responsibilities and rights of businesses and the state as they pertain to small business certification.

NOTE: Authority cited: Sections 14837 and 14843, Government Code. Reference: Sections 14835, 14837, 14838 and 14839.1, Government Code.

HISTORY

1. New Subchapter 8 (Sections 1896, 1896.2, 1896.20 and 1896.30) filed 4–19–74 as an emergency; designated effective 5–1–74. Certificate of Compliance included (Register 74, No. 16).
2. Amendment of subsections (k)(3) and (l)(1) filed 12–31–75 as an emergency; designated effective 1–1–76 (Register 76, No. 1).
3. Amendment of subsections (k) and (l) filed 6–19–78; effective thirtieth day thereafter (Register 78, No. 25).
4. Amendment filed 9–25–78; effective thirtieth day thereafter (Register 78, No. 39).
5. Amendment of subsection (m)(1)(B) filed 10–13–78; effective thirtieth day thereafter (Register 78, No. 42).
6. Editorial correction of NOTE filed 12–6–82 (Register 82, No. 50).
7. Amendment of subsections (l) and (m) and new subsection (n) filed 10–7–85; effective upon filing pursuant to Government Code Section 11346.2(d) (Register 85, No. 41).
8. Amendment filed 6–6–88 as an emergency; operative 6–6–88 (Register 88, No. 25). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 10–4–88.
9. Certificate of Compliance including amendment of subsection (k) transmitted to OAL 10–4–88 and filed 11–2–88 (Register 88, No. 46).
10. Change without regulatory effect amending section filed 3–30–99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 14).
11. Repealer and new section filed 8–10–2004; operative 9–9–2004 (Register 2004, No. 33).

§ 1896.2. Authority.

The Department shall have the sole responsibility for determining the eligibility of and certifying small businesses pursuant to the provisions of the Small Business Procurement and Contract Act, Article 1 of Chapter 6.5, Part 5.5 of Division 3, Title 2, Government Code, commencing with § 14835.

When authorized by the applicant, the Department may share certification data and information with other state, federal, or local agencies for purposes of enabling the applicant to become certified as a small business with these other public agencies.

NOTE: Authority cited: Sections 14837 and 14843, Government Code. Reference: Sections 14835, 14837 and 14839.1, Government Code.

HISTORY

1. Amendment filed 9–25–78; effective thirtieth day thereafter (Register 78, No. 39).
2. Editorial correction of NOTE filed 12–6–82 (Register 82, No. 50).
3. Amendment filed 6–6–88 as an emergency; operative 6–6–88 (Register 88, No. 25). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 10–4–88.
4. Certificate of Compliance transmitted to OAL 10–4–88 and filed 11–2–88 (Register 88, No. 46).
5. Repealer of article 2 heading and repealer and new section filed 8–10–2004; operative 9–9–2004 (Register 2004, No. 33).

§ 1896.4. Definitions.

The terms defined in this article shall have the following meanings whenever they appear in this subchapter:

(a) Affiliate or affiliation refers to a relationship of direct or indirect control or shared interests, as determined in § 1896.12, between the applicant or a small business and another business.

(b) ALJ means Administrative Law Judge, as defined in Government Code § 11502, assigned by the Office of Administrative Hearings to consider and rule on appeals of certification denial, decertification, and sanctions.

(c) Applicant means a business that has filed an application for certification as a small business with the Department on the Small Business Certification Application, STD. 813, REV. 1/2002, which is incorporated by reference.

(d) Assignment means a transfer of rights, responsibility, or property.

(e) Awarding department means any agency, department, office, board, commission, institution, hospital, the California State universities and colleges, and any other entity empowered by law to enter into contracts on behalf of the State of California.

(f) Bid means an offer made in response to a solicitation.

(g) Business means an entity organized for profit including, but not limited to, an individual, sole proprietorship, partnership, limited liability partnership, corporation, limited liability company, joint venture, association or cooperative; or solely for purposes of the Prompt Payment Act (Government Code 927 et seq.), a duly authorized nonprofit corporation.

(h) Commercially useful function means:

(1) The contractor or subcontractor is responsible for the execution of a distinct element of the work of the contract; carrying out its obligation by actually performing, managing or supervising the work involved; and performing work that is normal for its business services and functions; and

(2) The contractor or subcontractor is not further subcontracting a greater portion of the work than would be expected by normal industry practices.

(3) The contractor or subcontractor is responsible, with respect to materials and supplies provided on the subcontract, for negotiating price, determining quality and quantity, ordering the material, installing (when applicable), and paying for the material itself.

(4) A contractor or subcontractor will not be considered as performing a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to achieve the appearance of small business participation.

(i) Department means the Department of General Services.

(j) Disabled veteran–owned small business means a business defined pursuant to Government Code § 14838(f)

(k) Employee means an individual employed by a business that is either:

(1) Reported as an employee to the State of California, Employment Development Department (EDD) on the business's Quarterly Wage and Withholding Report or other format accepted by EDD; or

(2) Reported as an employee by the business on another state's report equivalent to the EDD's Quarterly Wage and Withholding Report.

(*l*) Gross annual receipts means "Total Gross Receipts or Sales", less "Returns and Allowances," as reported on the business' income tax returns, as filed with the federal Internal Revenue Service.

(m) Independently owned and operated means a business concern that independently manages and controls the day–to–day operations of its own business through its ownership and management, without undue influence by an outside entity or person that may have an ownership and/or financial interest in the management responsibilities of the applicant business or small business.

(n) Joint Venture means an association of businesses established by written agreement to engage in and carry out a single business venture for joint profit, for which purpose they combine their efforts, property, money, skills and/or knowledge.

(o) Local agency means any county, city, city and county, district, public authority, public agency, school district, and any other political subdivision or public corporation in the State, but does not include the State.

(p) Manufacturer means a business as defined in Government Code § 14837(c), pursuant to the determination criteria set forth in Section 1896.12.

(q) Microbusiness means a small business that, together with affiliates, has average annual gross receipts of two million, seven hundred and fifty thousand dollars ($2,750,000) or less over the previous three years, as adjusted by the Department pursuant to Government Code § 14837(d)(2), or is an manufacturer, as defined in Government Code § 14837, with 25 or fewer employees.

(r) Net bid price means the verified price of a bid, after all adjustments described in the solicitation have been made.

(s) Non–Profit Corporation means, for purposes of the Prompt Payment Act, California Government Code § 927 et. seq, a duly authorized non–profit corporation.

(t) Non–small business means a responsible bidder that is not certified as a small business.

(u) Principal office means where the business is headquartered and conducts the management and operations of the business.

(v) Responsive bid means a bid that clearly substantiates compliance without material deviation with all specifications, requirements, and the terms and conditions of the solicitation.

(w) Small business means a business that meets the eligibility requirements contained herein, that has been certified by the Department as a small business. For the purposes of these regulations, whenever the term small business is used, it means certified small business and includes microbusinesses.

(x) Solicitation means the notification to prospective bidders that an awarding department wishes to receive bids for furnishing goods, services, information technology, or construction.

NOTE: Authority cited: Sections 14837 and 14843, Government Code. Reference: Sections 927, 927.2, 11370.2, 11502 and 14837, Government Code; Section 999, Military and Veterans Code; and Title 13 Code of Federal Regulations (CFR), Chapter I, Part 121, Section 121.104.

HISTORY

1. Amendment and renumbering of Section 1896.20 to Section 1896.4 filed 9–25–78; effective thirtieth day thereafter (Register 78, No. 39). For prior history, see Register 74, No. 16.
2. Editorial correction of NOTE filed 12–6–82 (Register 82, No. 50).
3. Amendment filed 6–6–88 as an emergency; operative 6–6–88 (Register 88, No. 25). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 10–4–88.
4. Certificate of Compliance transmitted to OAL 10–4–88 and filed 11–2–88 (Register 88, No. 46).
5. Change without regulatory effect amending section and NOTE filed 3–30–99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 14).
6. Repealer and new section filed 8–10–2004; operative 9–9–2004 (Register 2004, No. 33).
7. Amendment of subsection (q) filed 1–11–2007; operative 1–11–2007 pursuant to Government Code section 11343.4 (Register 2007, No. 2).

Article 2. Small Business Preference

§ 1896.6. Application of the Small Business and Non–Small Business Subcontractor Preferences.

(a) Small businesses will be granted the five percent (5%) small business preference on a bid evaluation by an awarding department when a responsible non–small business has submitted the lowest–priced, responsive bid or a bid that has been ranked as the highest scored bid pursuant to a solicitation evaluation method described in § 1896.8, and when the small business:

(1) Has included in its bid a notification to the awarding department that it is a small business or that it has submitted to the Department a complete application pursuant to § 1896.14 no later than 5:00 p.m. on the bid due date, and is subsequently certified by the Department as a small business; and

(2) Has submitted a timely, responsive bid; and

(3) Is determined to be a responsible bidder.

(b) Non–small business bidders will be granted a five percent (5%) non–small business subcontractor preference on a bid evaluation by an awarding department when a responsible non–small business has submitted the lowest–priced responsive bid or a bid that has been ranked as the highest scored bid pursuant to a solicitation evaluation method described in §1896.8, and when the non–small business bidder:

(1) Has included in its bid a notification to the awarding department that it commits to subcontract at least twenty–five percent (25%) of its net bid price with one or more small business(es); and

(2) Has submitted a timely, responsive bid; and

(3) Is determined to be a responsible bidder; and

(4) Submits a list of the small business(es) it commits to subcontract with for a commercially useful function in the performance of the contract. The list of subcontractors shall include their name, address, phone number, a description of the work to be performed, and the dollar amount or percentage (as specified in the solicitation) per subcontractor.

NOTE: Authority cited: Sections 14837 and 14843, Government Code. Reference: Sections 14837 and 14838, Government Code.

HISTORY

1. New section filed 9–25–78; effective thirtieth day thereafter (Register 78, No. 39).
2. Amendment filed 6–6–88 as an emergency; operative 6–6–88 (Register 88, No. 25). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 10–4–88.
3. Certificate of Compliance transmitted to OAL 10–4–88 and filed 11–2–88 (Register 88, No. 46).
4. New article 2 heading and repealer and new section filed 8–10–2004; operative 9–9–2004 (Register 2004, No. 33).

§ 1896.8. Computing the Small Business and the Non–Small Business Subcontractor Preferences.

(a) Awards Made to the Lowest Responsive, Responsible Bidder

(1) The five percent (5%) small business or non–small business subcontractor preferences are used for bid evaluation purposes when determining a contract award in the following situations:

(A) There is at least one small business competing, and award of the contract will be made to the lowest responsive, responsible bidder. The preference shall be computed as follows:

1. Five percent (5%) is computed from the lowest, responsive and responsible bid of a business that is not a small business. This results in the preference amount.

2. The preference amount is subtracted from the small business' bid amount.

(B) There is at least one non–small business competing that is subcontracting at least twenty–five percent (25%) of its net price bid to one or more small businesses, and award of the contract will be made to the low-

est responsive, responsible bidder. The preference shall be computed as follows:

1. Five percent (5%) is computed from the lowest, responsive and responsible bid of a business that is not a small business, or is not subcontracting to a small business. This results in the preference amount.

2. The preference amount is subtracted from the bid of the non–small business that is subcontracting at least twenty–five percent of its net price bid to one or more small businesses.

(b) Awards Based on Highest Scored Proposal

(1) The five percent (5%) small business preference or non–small business subcontractor preferences are used for bid evaluation purposes when determining a contract award in the following situations:

(A) There is at least one small business competing, and award of the contract is to be made to the highest scored responsive bid submitted by a responsible bidder following an evaluation process that weighs factors other than price, together in a formula with price. The preference shall be computed as follows:

1. The awarding department shall specify the minimum number of points, if any, that a bid must receive in order to be deemed responsive and of acceptable quality. If a small business does not achieve the specified minimum number of points, it shall not be entitled to the five percent (5%) preference.

2. Five percent (5%) of the score of the highest scored responsive bid submitted by a responsible non–small business is computed as specified in the solicitation. The result of the calculation is a number that represents the preference points.

3. The preference points are then included in the formula as specified in the solicitation to determine the highest scored bidder.

(B) There is at least one non–small business competing that is subcontracting at least twenty–five percent (25%) of its net price bid to one or more small businesses, and award of the contract is to be made to the highest scored responsive bid submitted by a responsible bidder following an evaluation process that weighs factors other than price, together in a formula with price. The preference shall be computed as follows:

1. The awarding department shall specify the minimum number of points, if any, that a bid must receive in order to be deemed responsive and of acceptable quality. If a non–small business does not achieve the specified minimum number of points, it shall not be entitled to the five percent (5%) preference.

2. If the non–small business achieves the specified minimum number of points, five percent (5%) of the score of the highest scored responsive bid submitted by a responsible non–small business that is not subcontracting a minimum of twenty–five percent (25%) of its net price bid to one or more small businesses is computed as specified in the solicitation. The result of the calculation is a number that represents the preference points.

3. The preference points are then included in the formula as specified in the solicitation to determine the highest scored bidder.

(c) If, after application of the small business preference to the bid of a small business, that bid is equal to the lowest priced, responsive bid from a responsible non–small business, or equal to the highest scored bid offered by a responsible non–small business, as applicable, the contract shall be awarded to the small business for the amount of its bid.

(d) If, after application of the non–small business subcontractor preference, a responsible non–small business that has submitted a responsive bid is the lowest bidder, and does not displace a small business from winning the award, the contract shall be awarded to the non–small business for the amount of its bid.

(e) In no event shall the amount of the small business or non–small business subcontractor preferences awarded on a single bid exceed $50,000, and in no event shall the combined cost of the small business or non–small business subcontractor preference and preferences awarded pursuant to any other provision of law exceed $100,000. In bids that the state has reserved the right to award by line item, or make multiple awards, the small business preference shall be applied to maximize the participation of small businesses.

(f) In the event of a precise tie between the bid of a small business and the bid of a disabled veteran business enterprise that is also a small business, the award shall go to the disabled veteran business enterprise that is also a small business.

NOTE: Authority cited: Sections 14837 and 14843, Government Code. Reference: Sections 4535.2, 7084, 7118 and 14838, Government Code; and Sections 12102 and 12162, Public Contract Code.

HISTORY

1. New section filed 9–25–78; effective thirtieth day thereafter (Register 78, No. 39).
2. Editorial correction of NOTE filed 12–6–82 (Register 82, No. 50).
3. Amendment filed 6–6–88 as an emergency; operative 6–6–88 (Register 88, No. 25). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 10–4–88.
4. Certificate of Compliance transmitted to OAL 10–4–88 and filed 11–2–88 (Register 88, No. 46).
5. Change without regulatory effect amending section filed 3–30–99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 14).
6. Repealer and new section filed 8–10–2004; operative 9–9–2004 (Register 2004, No. 33).

§ 1896.10. Substitution of a Small Business Subcontractor.

(a) After award of a contract based in part on the application of the Non–Small Business Subcontractor preference, the contractor must use the small business subcontractor(s) and/or supplier(s) proposed in the bid to the state unless a substitution is requested in writing to the awarding department and the awarding department approves the substitution in writing prior to the commencement of any work. The substitution request must include at least the following:

(1) An explanation of the reason for the substitution.

(2) The contractor must substitute a small business with another small business. However, if the small business substitution cannot occur, the contractor must include a written justification and the steps that were taken to try to acquire a new small business subcontractor and how that portion of the contract will be fulfilled.

(3) A description of the work to be performed, identified both as a task(s) and as a dollar amount or percentage of the overall contract that the substituted business will perform. The substituted business(es), if approved, shall be required to perform a commercially useful function in the contract pursuant to § 1896.6.

(b) The request for substitution of a small business and the awarding department's approval or disapproval cannot be used as an excuse for noncompliance with any other provision of law, including but not limited to, the Subletting and Subcontracting Fair Practices Act (§ 4100 et seq., Public Contract Code) or any other contract requirements relating to substitution of subcontractors.

(c) If a contractor requests substitution of its subcontractor(s)/supplier(s) by providing a written request to the awarding department in accordance with § 1896.10, the awarding department may consent to the substitution in any of the situations set forth in Public Contract Code § 4107 of the Subletting and Subcontracting Fair Practices Act.

(d) Prior to approval of the prime contractor's request for the substitution, the awarding department, or its duly authorized officer, shall give notice in writing to the listed subcontractor of the prime contractor's request to substitute and the reasons for the request to substitute. The notice shall be served by certified or registered mail to the last known address of the subcontractor. The listed subcontractor that has been so notified shall have five (5) working days after the receipt of the notice to submit written objections to the substitution to the awarding department. Failure to file these written objections shall constitute the listed subcontractor's consent to the substitution. If written objections are filed, the awarding department shall give notice in writing of at least five (5) working days to the listed subcontractor of a hearing by the awarding department on the prime contractor's request for substitution.

(e) Failure of the contractor to subcontract with the small businesses listed on its bid to the state, or follow these substitution rules may be grounds for the Department to impose sanctions pursuant to Government Code § 14842.5 and §1896.16. In the event such sanctions are to be im-

posed, the contractor shall be notified in writing and entitled to a hearing pursuant to §§ 1896.18 and 1896.20.

NOTE: Authority cited: Sections 14837 and 14843, Government Code. Reference: Sections 14837 and 14842.5 Government Code; and Section 4107, Public Contract Code.

HISTORY

1. Amendment and renumbering of Section 1896.30 to Section 1896.10 filed 9–25–78; effective thirtieth day thereafter (Register 78, No. 39). For prior history, see Register 74, No. 16.
2. Editorial correction of NOTE filed 12–6–82 (Register 82, No. 50).
3. Repealer and new section filed 8–10–2004; operative 9–9–2004 (Register 2004, No. 33).

Article 3. Certification

§ 1896.12. Eligibility for Certification as a Small Business.

(a) To be eligible for certification as a small business, a business must meet all of the following qualifying criteria:

(1) It is independently owned and operated; and

(2) The principal office is located in California; and

(3) The officers of the business in the case of a corporation; officers and/or managers, or in the absence of officers and/or managers, all members in the case of a limited liability company; or the owner(s) in all other cases, are domiciled in California; and

(4) It is not dominant in its field of operation(s), and

(5) It is either:

(A) A business that, together with all affiliates, has 100 or fewer employees, and annual gross receipts of twelve million dollars ($12,000,000) or less as averaged for the previous three tax years, as adjusted by the Department pursuant to Government Code § 14837(d)(3); or

(B) A manufacturer as defined herein that, together with all affiliates, has 100 or fewer employees.

(b) To be eligible for designation as a microbusiness, a business must meet all the qualifying criteria in subparagraph (a), and in addition, must be either:

(1) A business that, together with all affiliates, has annual gross receipts of two million, seven hundred and fifty thousand dollars ($2,750,000) or less as averaged for the previous three tax years, as adjusted by the Department pursuant to Government Code §14837(d)(3); or

(2) A manufacturer as defined herein that, together with all affiliates, has 25 or fewer employees.

(c) Joint ventures must be certified on a bid–by–bid basis. The joint venture shall not be subject to the average annual gross receipts and employee limits imposed by this subchapter. However, each individual business participating in the joint venture must be certified as a small business.

(d) Certification Determination

(1) In determining if a business is eligible for certification, the Department may consider the applicant's or small business' organizational structure, operations and business relationships during the previous three tax years (or years the business has been in existence if fewer than three tax years), and may request the applicant provide copies of income tax returns as filed with the California Franchise Tax Board in addition to the required federal income tax returns and schedules, as filed with the federal Internal Revenue Service, or other documentation deemed necessary for the Department to make a final certification determination.

(2) In determining if a business is eligible for small business certification, the applicant business, together with all affiliates, has been in existence less than three years shall have 100 or fewer employees, and an average annual gross receipts of $12 million or less as averaged by the number of years in existence, as adjusted by the Department pursuant to Government Code, § 14837(d)(3).

(3) In determining if a business is eligible for microbusiness certification, the applicant business, together with all affiliates, has been in existence less than three years shall have an average annual gross receipts of $2.75 million or less as averaged by the number of years in existence, as adjusted by the Department pursuant to Government Code, § 14837(d)(3).

(4) The Department's determination of whether a business is a manufacturer may be based on, but not limited to:

(A) Whether the business, with its own facilities, performs the primary activities in transforming inorganic or organic substances into the end item being acquired, and is not a packager or, in the case of kits, a final assembler. The end item must possess characteristics that, as a result of mechanical, chemical, or human action, it did not possess before the original substances, parts, or components were assembled or transformed. The end item may be finished and ready for utilization or consumption, or it may be semi–finished as a raw material to be used in further manufacturing.

(B) The factors considered by the federal Small Business Administration pursuant to Title 13, Code of Federal Regulations (CFR), Chapter I, Part 121, § 121.406(b)(2).

(C) Whether more than fifty percent (50%) of annual gross receipts, as determined by the Department, result from the manufacture and sale of products manufactured by the business.

(5) The Department's determination of whether the officers, owners or members of a business, as applicable, are domiciled in California may be based on, but not be limited to, a review of:

(A) Voter registration records;

(B) Homeowner's property tax exemption filings;

(C) Driver's licenses;

(D) Utility billings; and

(E) Other documents, acts, occurrences, or events that indicate presence in California is more than temporary or transient.

(6) The Department's determination of whether the Principal Office of a business is located in California shall be based on:

(A) In the case of a corporation, the location where the corporate officers manage, direct and control the operations must be located within California;

(B) In the case of Limited Liability Companies, the location where the Manager(s) and/or Officer(s) or Members manage, direct and control the operations must be located within California;

(C) In all other cases, the location where the owner(s) manage, direct and control the operations must be located within California.

(7) The Department's determination of whether a business is affiliated with another business may be based on, but not limited to, historical and current factors including ownership, management, financial and/or business relationships or ties with another business, familial relationships, contractual relationships, assignments, passage of title to goods or merchandise, and other related matters.

(A) The Department may additionally consider the following in determining affiliation:

1. The applicant business assigns a contract, in whole or in part, to another business.

2. There exists common management with the applicant business and another business.

3. The applicant business and another business share facilities, equipment, systems, or employees.

4. There is a familial relationship with the applicant business and another business and both businesses are in the same industry.

5. A person or business has assisted the applicant business with activity to meet bond/security requirements.

(B) The following types of business relationships shall not be considered affiliations:

1. A franchise and/or license agreement provided that the franchisee or licensee has the right to profit from its efforts and bears the risk of loss commensurate with ownership.

2. A manufacturer's or service provider's representative provided that a written agreement exists between the manufacturer(s) or service provider(s) and the representative that substantiates the independent nature of the individual businesses.

(8) The Department shall presume an applicant business not to be independently owned and operated if any of the following exists:

(A) An outside person or business concern owns or controls, or has the power to control, fifty percent (50%) or more of the voting stock of the applicant business, or

(B) One or more business owners, general partners, directors, officers or members of an outside business concern controls or has the power to control or influence the day–to–day operations of the applicant business, board of directors and/or owner(s) of the applicant business.

(9) An applicant business concern that exercises or has the ability to exercise a controlling or major influence, on a statewide basis, in a kind of business activity or field of operation in which a number of business concerns are primarily engaged, shall be determined to be dominant in its field of operation. The following criteria, among others, may be considered by the Department in determining if the applicant business is dominant in its field of operation:

(A) Volume of business;

(B) Financial resources;

(C) Competitive status or position;

(D) Ownership or control of materials, processes, licenses agreements and facilities;

(E) Sales territory and nature of business activity.

(e) In order to determine the eligibility of a business for certification as a small business, the Department may consider whatever information is provided to it from records gathered or held by any California state or local agency, any governmental agency of another state, or the federal government.

(f) Businesses that have been certified by or on behalf of other governmental organizations may be eligible for certification as a small business if the organization uses substantially the same or more stringent definitions as those set forth in Government Code § 14837, and substantially the same or more stringent certification analysis process than used by the Department.

NOTE: Authority cited: Sections 14837 and 14843, Government Code. Reference: Section 14837, Government Code; and Title 13 CFR, Chapter I, Part 121, Sections 121.103 and 121.406.

HISTORY

1. Renumbering and amendment of former Section 1896.12 to Section 1896.18, and new Section 1896.12 filed 6–6–88, as an emergency; operative 6–6–88 (Register 88, No. 25). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 10–4–88. For history of former section 1896.12, see Register 82, No. 50.
2. Certificate of Compliance transmitted to OAL 10–4–88 and filed 11–2–88 (Register 88, No. 46).
3. Change without regulatory effect amending section filed 3–30–99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 14).
4. New article 3 heading and repealer and new section filed 8–10–2004; operative 9–9–2004 (Register 2004, No. 33).
5. Amendment of subsections (a)(5)(A), (b)(1) and (d)(2)–(3) filed 1–11–2007; operative 1–11–2007 pursuant to Government Code section 11343.4 (Register 2007, No. 2).

§ 1896.14. Responsibilities of the Small Business.

(a) In order to be considered by the Department for certification as a small business, a business must:

(1) Submit a completed application to the Department, including all required substantiating documentation and information needed by the Department to determine the business' eligibility for small business certification; and

(2) Respond to any deficiency notice from the Department, by the date and time specified by the Department, with all additional information requested, or provide reasons acceptable to the Department regarding why the deficiency request cannot be fulfilled; and

(3) Meet all eligibility requirements as set forth in this subchapter.

(b) A small business must provide written notification to the Department of any changes in its operation or ownership during its certification period that may affect its continuing eligibility as a small business pursuant to § 1896.12. Should a small business be sold during its certification period, the certification is not transferable to the new owners. Should the new business owners choose to do so, they may submit a new application for certification.

(c) Small business contractors and subcontractors shall perform commercially useful functions in each contract they are awarded by state agencies.

(d) Every business certified as a small business shall be subject to reverification of status at any time. Failure by a small business to provide requested information that supports its continued eligibility as a small business, by the date and time specified by the Department, shall be grounds for decertification.

NOTE: Authority cited: Sections 14837 and 14843, Government Code. Reference: Sections 14837, 14842 and 14842.5, Government Code.

HISTORY

1. New section filed 6–6–88 as an emergency; operative 6–6–88 (Register 88, No. 25). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 10–4–88.
2. Certificate of Compliance transmitted to OAL 10–4–88 and filed 11–2–88 (Register 88, No. 46).
3. Repealer and new section filed 8–10–2004; operative 9–9–2004 (Register 2004, No. 33).

§ 1896.16. Certification by the Department.

(a) A business meeting the eligibility and certification requirements set forth herein shall be certified as a small business, and shall be accorded all rights and privileges due pursuant to that certification.

(b) A small business meeting the microbusiness eligibility requirements shall also be designated a microbusiness. If the business exceeds the eligibility requirements for microbusiness designation at any time during the certification period, the microbusiness designation shall be removed. However, as long as the business still meets the eligibility requirements for a small business, the small business certification shall not be affected for the remainder of the certification period.

(c) The Department may certify businesses that have been certified by or on behalf of another governmental organization that uses substantially the same or more stringent definitions as those set forth in Government Code § 14837, and substantially the same or more stringent certification analysis process than used by the Department.

(d) Certification will be valid for up to thirty–six (36) months. Prior to the end of a certification period, in its sole discretion, the Department may extend the certification period up to an additional twenty–four (24) months after certification eligibility reverification or confirmation pursuant to § 1896.12. The total period of certification, including extensions, shall not exceed sixty (60) months. At the end of a 60–month certification period, businesses may re–apply for certification. If eligible, a new certification period of up to 36 months, with extensions up to an additional 24 months, will begin.

(e) The application of a business that does not meet the eligibility requirements for certification as a small business, or does not respond to requests from the Department for additional information, will be denied certification.

(f) If a small business is determined by the Department to no longer meet the eligibility requirements for small business certification, the certification shall be revoked.

(g) If it is determined by the Department that a small business is not performing a commercially useful function on a contract it has been awarded by a state agency, or on a state contract that it is performing as a subcontractor, the certification may be revoked.

(h) Pursuant to Government Code § 14842, the Department may impose the following sanctions on a business that obtains or retains certification as a small business on the basis of having furnished incorrect, incomplete or fraudulent information to the Department, and that has been awarded one or more contracts as a result of the certification:

(1) The business shall pay to the state any difference between the contract amount awarded to the business and the contract amount had it been properly awarded; and

(2) The business shall be assessed a penalty in an amount not more than ten percent (10%) of the amount of the contract involved; and

(3) The business shall be ineligible to transact any business with the state for a period of not less than three months and not more than 24 months.

(4) The small business certification of the business shall be revoked for a period of not less than one year. For additional or subsequent violations, the suspension shall be extended for a period of up to three years.

(i) Pursuant to Government Code § 14842, the Department may impose sanctions on a business that has obtained classification as a small business or microbusiness by reason of having furnished incorrect supporting information or by reason of having withheld information, and that knew, or should have known, the information furnished was incorrect or the information withheld was relevant to its request for classification, and that by reason of that classification has been awarded a contract to which it would not otherwise have been entitled; under conditions set forth in Government Code § 14842, the business may be prohibited from:

(1) Entering into a state project or state contract,

(2) Bidding to an awarding department,

(3) Being a subcontractor to a contractor for an awarding department,

(4) Being a supplier to an awarding department.

(j) Pursuant to Government Code §§ 14842 and 14842.5, the Department may impose sanctions on a person or business for knowing, willful and intentional violations of a penalty of not more than $5,000.

(k) When denying an application for certification, decertifying a small business, or imposing any sanctions, the Department will notify the business in writing. The notice shall include the reasons for the denial, decertification, or imposition of sanctions, as applicable, and provide information regarding the process for appealing the decision(s).

(*l*) Any decertification issued pursuant to Government Code §§ 14842 or 14842.5 shall apply to the principals of the business, and neither the business nor the principals may re–apply for certification, either as the same business or a new business, for a period of not less than one year, nor more than two years, from the date of certification revocation.

(m) State agencies may reject the bid of a business offering goods, information technology, or services manufactured or provided by a subcontractor if that subcontractor has been declared ineligible to transact any business with the state pursuant to Government Code § 14842.

NOTE: Authority cited: Sections 14837 and 14843, Government Code. Reference: Sections 14837, 14842 and 14842.5, Government Code.

HISTORY

1. New section filed 6–6–88 as an emergency; operative 6–6–88 (Register 88, No. 25). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 10–4–88.
2. Certificate of Compliance transmitted to OAL 10–4–88 and filed 11–2–88 (Register 88, No. 46).
3. Change without regulatory effect amending section filed 3–30–99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 14).
4. Repealer and new section filed 8–10–2004; operative 9–9–2004 (Register 2004, No. 33).

Article 4. Appeals

§ 1896.18. Appeal of Certification Denial, Decertification, or the Imposition of Sanctions.

(a) A business, having been denied certification as a small business, or having been provided written notice by the Department of its intention to decertify the business as a small business, or of its intention to impose sanctions, may appeal the Department's determination.

(b) An appeal shall be filed with the Department by the date and time specified by the Department in its notice. The appeal shall be in writing and include a detailed written statement of the facts supporting the appeal.

(c) Grounds for appeal shall be:

(1) The applicant should have been certified as a small business based on the information contained in the application including, if applicable, supplemental material submitted to the Department upon its request, as of the date of the Department's notice of certification denial.

(2) The business should remain certified as a small business based on the information contained in the application, including, if applicable, supplemental material submitted to the Department upon its request, as of the date of the Department's notice of decertification determination.

(3) Sanctions should not be imposed, because one or more of the conditions set forth in Government Code §§ 14842 or 14842.5, as applicable, did not exist.

NOTE: Authority cited: Sections 14837 and 14843, Government Code. Reference: Sections 14842 and 14842.5, Government Code.

HISTORY

1. New section filed 9–25–78; effective thirtieth day thereafter (Register 78, No. 39).
2. Editorial correction of NOTE filed 12–6–82 (Register 82, No. 50).
3. Renumbering and amendment of former Section 1896.12 to Section 1896.18 filed 6–6–88, as an emergency; operative 6–6–88 (Register 88, No. 25). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 10–4–88.
4. Certificate of Compliance transmitted to OAL 10–4–88 and filed 11–2–88 (Register 88, No. 46).
5. Change without regulatory effect amending subsection (a)(3) filed 3–30–99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 14).
6. New article 4 heading and repealer and new section filed 8–10–2004; operative 9–9–2004 (Register 2004, No. 33).

§ 1896.20. Appeal Hearings.

Appeal hearings shall be conducted in accordance with the Administrative Procedure Act, Chapter 5, Part 1 of Division 3, Title 2, Government Code, commencing with § 11500, except as provided in this subchapter. It shall be the ALJ's sole discretion as to whether to conduct a hearing, or proceed with a decision based solely on the written material. If a hearing is held, the ALJ shall have discretion to limit the number of witnesses and the time allocated to each, authority to permit or limit cross–examination, and exclusive discretion to issue subpoenas and/or subpoena duces tecum. There shall be no right to take depositions, issue interrogatories, or subpoena persons or documents.

NOTE: Authority cited: Sections 14837 and 14843, Government Code. Reference: Sections 11500, 11501, 11502, 11503, 11504, 11504.5, 11505, 11506, 11507, 11507.3, 11507.5, 11507.6, 11507.7, 11508, 11509, 11511.5, 11511.7, 11512, 11513, 11514, 11515, 11516, 11517, 11518, 11518.5, 11519, 11520, 11521, 11523, 11524, 11526, 11527 and 11528, Government Code.

HISTORY

1. New section filed 6–6–88 as an emergency; operative 6–6–88 (register 88, No. 25). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 10–4–88. For history of former Section 1896.20, see Registers 78 No. 39 and 74, No. 16.
2. Certificate of Compliance including amendment transmitted to OAL 10–4–88 and filed 11–2–88 (Register 88, No. 46).
3. Change without regulatory effect amending section filed 3–30–99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 14).
4. Repealer and new section filed 8–10–2004; operative 9–9–2004 (Register 2004, No. 33).

§ 1896.22. Appeal Decisions.

The decision of the ALJ shall be an order to uphold or deny the appeal, and shall include the imposition of sanctions pursuant to Government Code §§ 14842 and 14842.5, as appropriate. If the ALJ upholds the appeal of a certification denial or decertification, the Department shall certify the business as a small business pursuant to § 1896.16.

NOTE: Authority cited: Sections 14837 and 14843, Government Code. Reference: Sections 11517, 14842 and 14842.5, Government Code.

HISTORY

1. New section filed 8–10–2004; operative 9–9–2004 (Register 2004, No. 33).

Subchapter 9. Small and Minority Business Procurement and Assistance Division—Target Area Contract Preference Act

Article 1. General Provisions

§ 1896.30. Definitions.

As used in these rules and regulations:

(a) "The Act" means the Target Area Contract Preference Act, commencing with Section 4530 of the California Government Code.

(b) "Hire" means to employ on a full–time basis a person or persons for the purpose of performing a contract in accordance with the provisions of the Act.

(c) "Contract for goods" means a contract for the purchase of materials, equipment, and supplies, but excluding a contract with a governmental entity.

(d) "Contract for services" means a contract for the rendering of personal or consultant services, but excluding a contract with a governmental entity. For the purpose of this definition, personal services shall be construed liberally so as to include services requiring little or no discretion, such as but not limited to, blueprinting, photofinishing, laboratory analysis, automobile repairs, office equipment repairs, and reproduction services.

(e) "False certification" means a certification which, either by omission or inclusion, the certifying party knows to be false or should have known to be false.

(f) "California based company" means a corporation or business, of which the principal office is located in California, and the owners, or officers if the firm is a corporation, are domiciled in California.

(g) "50 percent of the labor required" means one–half of the total employee hours needed to perform the contract involved. In computing total employee hours with respect to a contract for goods, the employee hours required for manufacturing the goods offered shall be included regardless of whether a bidder is or is not the manufacturer of the goods.

(h) "Work force" as expressed in the Act means the total number of employees employed for performance of the contract involved.

(i) "Lowest responsible bid or proposal" means that bid or proposal which pursuant to the criteria contained in the solicitation document would be entitled to contract award without regard to any preference.

NOTE: Authority cited: Section 4535.3, Government Code. Reference: Sections 4530, 4533, 4533.1, 4534 and 4534.1, Government Code.

HISTORY

1. New Subchapter 9 (Article 1, Sections 1896.30–1896.41) filed 8–3–82; effective thirtieth day thereafter (Register 82, No. 32).

§ 1896.31. Worksite Preference/Contract for Goods.

Whenever a state agency prepares an invitation for bid (IFB) for a contract for the purchase of goods, the cost of which is estimated to be in excess of $100,000, except a contract where the worksite will be fixed by the terms of the contract, provision shall be made in the IFB for a 5 percent preference for California based companies who certify under the penalty of perjury that no less than 50 percent of the labor required to perform the contract shall be accomplished at a worksite or worksites located in a distressed area.

NOTE: Authority cited: Section 4535.3, Government Code. Reference: Section 4533, Government Code.

§ 1896.32. Hiring Preference/Contract for Goods.

Where a bidder complies with the provisions of rule 1896.31 the state shall award additional preferences ranging from 1 percent to 4 percent in accordance with Government Code Section 4533.1 if the bidder certifies under penalty o perjury it will hire the specified percentage of persons with high risk of unemployment during the period of contract performance.

NOTE: Authority cited: Section 4535.3, Government Code. Reference: Section 4533.1, Government Code.

§ 1896.33. Application of Preferences/Contract for Goods.

Preferences provided for by sections 1896.31 and 1896.32 for a contract for goods shall be granted in an amount equal to a corresponding percentage of the lowest responsible bid: provided, however, that for contract award purposes the total of any preferences for which the low responsible bidder qualifies under any provision of law shall be deducted from the total of any preferences to which a higher bidder may be entitled.

NOTE: Authority cited: Section 4535.3, Government Code. Reference: Sections 4533, 4533.1, Government Code.

§ 1896.34. Worksite Preference/Contract for Services.

Whenever a state agency prepares an IFB or a request for proposals (RFP) for a contract for services, the cost of which is estimated to be in excess of $100,000, except an IFB or a RFP where the worksite is fixed by the terms of the contract, provision shall be made in the IFB or the RFP for a 5 percent preference on the price submitted by California based companies who certify under penalty of perjury that they shall perform the contract at a worksite or worksites located in a distressed area.

NOTE: Authority cited: Section 4535.3, Government Code. Reference: Section 4534, Government Code.

§ 1896.35. Hiring Preference/Contract for Services.

Where a bidder complies with the provisions of rule 1896.34 the state shall award additional preferences ranging from 1 percent to 4 percent in accordance with Government Code Section 4534.1 if the bidder certifies under penalty of perjury it will hire the specified percentages of persons with high risk of unemployment for contract performance.

NOTE: Authority cited: Section 4535.3, Government Code. Reference: Section 4534.1, Government Code.

§ 1896.36. Application of Preference/Contract for Services.

Preferences provided for by sections 1896.34 and 1896.35 for a contract for services shall be granted in an amount equal to a corresponding percentage of the price offered by the lowest responsible bid or the lowest responsible proposal: provided, however, that for contract award purposes the total of any preferences for which the low responsible bidder qualifies under any provision of law shall be deducted from the total of any preferences to which a higher bidder may be entitled.

NOTE: Authority cited: Section 4535.3, Government Code. Reference: Sections 4534, 4534.1, Government Code.

§ 1896.37. Low Bid or Proposal.

No preference provided for under Article 1 shall be granted unless the lowest responsible bid or proposal received is in excess of $100,000: provided, further, that if a state awarding authority has reserved the right in its Invitation for Bids or Request for Proposals to award multiple contracts on the basis of individual items, no preference provided for under Article 1 shall be granted for the purpose of a multiple contract award unless the lowest responsible bid or proposal submitted for a particular individual item or group of items that is the basis for contract award, is in excess of $100,000.

NOTE: Authority cited: Section 4535.3, Government Code. Reference: Sections 4533 and 4534, Government Code.

HISTORY

1. Editorial correction filed 8–10–82; designated effective 9–2–82 (Register 82, No. 32).
2. Editorial correction of printing error (Register 82, No. 40).

§ 1896.38. Assistance to Bidders/Department of General Services.

The Department of General Services with the cooperation of the State Office of Planning and Research shall assist prospective bidders in identifying those areas of the state which qualify as distressed areas under the Act and by otherwise being of general assistance.

NOTE: Authority cited: Section 4535.3, Government Code. Reference: Section 4532(d), Government Code.

§ 1896.39. Assistance to Bidders/Employment Development Department.

The Employment Development Department shall assist bidders seeking to certify that they will employ persons with high risk of unemployment in recruiting eligible job applicants and shall certify such applicants, except youths participating in qualified cooperative education programs who shall otherwise be certified.

NOTE: Authority cited: Section 4535.3, Government code.

§ 1896.40. Contract Provisions.

All IFB's and RFP's and contracts prepared by a state agency relative to contracts for goods or for services which will, or are estimated to exceed $100,000 in cost, and which are subject to the provisions of the Act, will include either expressly or by reference the following:

(a) Contractor or vendor agrees to comply with the requirements of the Target Area Contract Preference Act (Government Code Section 4530, et seq.) and attendant rules and regulations. (Title 2, California Administrative Code, Section 1896.30, et seq.).

(b) Contractor or vendor agrees that the state contracting agency, or its delegee, will have the right to inspect its facilities and operations and to inspect, review, obtain, and copy all records pertaining to performance of the contract or compliance with the requirements of the Act and attendant rules and regulations. Contractor or vendor further agrees that such records shall be maintained for a period of three (3) years after final payment under the contract.

(c) Contractor or vendor agrees with respect to a certification to hire persons with high risk of unemployment, to:

(1) Act in good faith for the purpose of maintaining such persons as employees for the duration of contract performance; and

(2) To make a reasonable effort to replace such persons, who for any reason permanently cease to be on the payroll, with other persons with high risk of unemployment; and

(3) To promptly report to the state contracting agency and thereafter confirm in writing within seven (7) days the names of any such persons who have been terminated or absent from work for more than three (3) consecutive work days and to communicate the reasons for the termination or absence. The contractor or vendor agrees under such circumstances to consult with the state contracting agency and the Employment Development Department with respect to replacement of such persons.

NOTE: Authority cited: Section 4535.3, Government Code. Reference: Section 4535, Government Code.

§ 1896.41. Hearings.

The state contracting agency shall be responsible for conducting the hearings authorized by Government Code Section 4535.1 relative to contract awards obtained due to the furnishing of a false certification. The state contracting agency may enter into an agreement for the purpose of having another state agency or office conduct such hearings and to furnish the state contracting agency with a report of findings and a recommendation.

NOTE: Authority cited: Section 4535.3, Government Code. Reference: Section 4535.1, Government Code.

Subchapter 10. Small Business Office—Late Payments on State Contracts with Small Businesses

§ 1896.50. Small Business Definitions.

For the purpose of determining whether a business qualifies for the penalty established by Government Code Section 926.15, the following definitions of small business shall apply:

(a) "Small Business," as used with regard to a construction contractor, means an individual or enterprise qualifying for the small business preference under Title 2, Subchapter 8, Section 1896(l) of this code.

(b) "Small Business," as used with regard to an agreement for the purchase, lease or rental (with option to purchase) of goods, means an individual or enterprise qualifying for the small business preference under Title 2, Subchapter 8, Section 1896(m) of this code.

(c) "Small Business" as used with regard to a Service firm means an individual or enterprise qualifying for the small business preference under Title 2, Subchapter 8, Section 1896(n) of this code.

NOTE: Authority cited: Sections 926.15(e) and 14843, Government Code. Reference: Sections 926.15 and 14839.1, Government Code; and Sections 1896(l), (m) and (n), California Administrative Code; and Section 1101, Public Contract Code.

HISTORY

1. New Subchapter 10 (Sections 1896.50 and 1896.51) filed 6–7–83; designated effective 6–8–83 pursuant to Government Code Section 11346.2(d) (Register 83, No. 24).
2. Amendment filed 10–7–85; effective upon filing pursuant to Government Code Section 11346.2(d) (Register 85, No. 41).

§ 1896.51. Affiliation.

The standards for, and definition of "affiliation" under this subchapter shall be the same as those established by Title 2, Subchapter 8, Section 1896(a) of this code.

NOTE: Authority cited: Sections 926.15(e) and 14843, Government Code. Reference: Sections 926.15(e), Government Code; and Section 1896(a), California Administrative Code.

Subchapter 10.5. Disabled Veteran Business Enterprise Participation Goal Program for State Contracts

§ 1896.60. Contract Approval.

For purpose of Public Contract Code Section 10295, an awarding department shall demonstrate compliance with the part of Article 1.5 (commencing with Section 10115) of Chapter 2 of Part 2 of Division 2 of the Public Contract Code that concerns Disabled Veteran Business Enterprises or DVBEs and these regulations.

NOTE: Authority cited: Sections 14600 and 14615, Government Code; and Sections 10115.3(b) and 10295, Public Contract Code. Reference: Section 10295, Public Contract Code; and *Monterey Mechanical Co. v. Wilson*, 125 F.3d 702 (9th Cir. 1997), rehearing denied, ___ F.3d ____ (March 9, 1998).

HISTORY

1. New section filed 4–16–90; operative 5–16–90 (Register 90, No. 18).
2. Amendment of subchapter heading filed 11–4–93 as an emergency; operative 11–4–93 (Register 93, No. 45). A Certificate of Compliance must be transmitted to OAL by 3–7–94 or emergency language will be repealed by operation of law on the following day.
3. Change without regulatory effect amending subchapter heading, section and NOTE filed 4–30–98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 20).

§ 1896.61. Definitions.

As used in these regulations:

(a) For the purposes of the DVBE participation program as related to contracts, the term "administering agency" means the Office of Small and Minority Business within the Department of General Services.

(b) The term "awarding department" shall have the meaning set forth in Section 10115.1(a) of the Public Contract Code.

(c) The term "bidder" means any person or entity, persons, firm, sole proprietorship, partnership, corporation, DVBE combination, or joint venture thereof making an offer, a proposal, or submitting a response to a solicitation competitively or non–competitively, for the purpose of securing a contract with an awarding department.

(d) The term "considered" as used in Section 10115.2(b)(5) of the Public Contract Code means that the bidder made a bona fide effort to carry out all actions with regard to DVBEs specified in Section 10115.2(b)(1–5) (except Section 10115.2(b)(3) of the Public Contract Code when the awarding department has waived the advertising requirements of Section 10115.2(b)(3) of the Public Contract Code in the solicitation), and reviewed DVBE responses and carefully evaluated and documented the reasons for not selecting such potential subcontractors. The bidder must consider all responding subcontractors for a specified service based upon the same information and evaluation criteria.

(e) The term "contract" means any agreement as defined by Section 10115.1(b) of the Public Contract Code. It does not include agreements such as those executed pursuant to Chapter 6 (commencing with Section 16850) of Part 3 of Division 4 of Title 2 of the Government Code; subvention aid or local assistance contracts including those contracts providing assistance to local governments and aid to the public directly or through an intermediary, such as a non–profit corporation organized for that purpose; agreements with other governmental entities; and agreements with sheltered workshops (as described in Welfare and Institutions Code Section 19404, et seq.).

(f) The term "control" as applied to "ownership (or management) and control" of DVBE means the DVBE owner(s) and/or DVBE manager(s) must demonstrate expertise specifically in the firm's field of operation in controlling the overall destiny and the day–to–day operations of the firm. Office management, clerical, or other experience unrelated to the firm's field of operations is insufficient to establish control. This control is comprised of two parts — Managerial and Operational.

(1) To have managerial control, the DVBE owner(s) and/or DVBE manager(s) must demonstrate responsibility for the critical areas of the firm's operations. The DVBE owner(s) and/or DVBE manager(s) must be personally responsible for at least one of the following:

(A) Negotiations, execution and signature of contracts; or

(B) Execution (signature) of financial (credit, banking, bonding) transactions and agreements.

(2) To have operational control, the DVBE owner(s) and/or DVBE manager(s) must demonstrate that he/she independently makes basic decisions in daily operations. Absentee or titular ownership by the DVBE owner(s) and/or DVBE manager(s) must include an active role in controlling the business. Control may be demonstrated in various ways such as:

(A) DVBE owner(s) and/or DVBE manager(s) have the ability to appoint or elect and to remove the majority of the Board of Directors;

(B) No formal or informal restrictions exist to limit voting power or control of the DVBE owner(s) and/or DVBE manager(s);

(C) No third party agreements restrict control by DVBE owner(s) and/or DVBE manager(s);

(D) DVBE owner(s) and/or DVBE manager(s) possess the requisite experience, education, knowledge and qualifications in the firm's field of operations;

(E) Salary/profits of DVBE owner(s) and/or DVBE manager(s) are commensurate with their ownership interest;

(F) DVBE owner(s) receive at least 51% of any dividends paid by the firm including distribution upon liquidation; and

(G) DVBE owner(s) are entitled to 100% of the value of each share of stock they hold if sold.

(H) DVBE owner(s) and/or DVBE manager(s) control the operation of the firm in the following areas:

1. Financial
2. Bonding
3. Supervision – direct responsibility for subordinates
4. Work force – direct responsibility for subordinates or subcontractors
5. Equipment
6. Materials
7. Facilities (office/yard)

(g) The term "Department" or "DGS" means the Department of General Services.

(h) The term "disabled veteran" means a veteran of the military, naval or air service of the United States with a service–connected disability who is a resident of the State of California.

(i) The term "disabled veteran business enterprise" or "DVBE" means a business concern that the Office of Small and Minority Business has certified as a DVBE.

(j) The term "joint venture" or "DVBE combination" means two or more parties who join together for a common business enterprise in which profits, losses and control are shared. The agreement between the parties must be set forth in writing.

(k) The term "Disabled Veteran Business Enterprise (DVBE) Focus and Trade Paper" means a publication that meets all of the criteria of Sections 1896.61(m) and (q).

(l) The term "DVBE contractor, subcontractor or supplier" means any person or entity that satisfies the ownership (or management) and control requirements of Section 1896.61(f); is certified in accordance with Section 1896.70; and provides services or goods that contribute to the fulfillment of the contract requirements by performing a commercially useful function. A DVBE contractor, subcontractor or supplier is considered performing a commercially useful function when it meets the following criteria:

(1) The business concern is: responsible for the execution of a distinct element of the work of the contract; carrying out its obligation by actually performing, managing or supervising the work involved; and performing work that is normal for its business services and functions, and

(2) The business concern is not further subcontracting a greater portion of the work than would be expected by normal industry practices.

(m) The term "papers focusing on disabled veteran business enterprises" used in Section 10115.2(b)(3) of the Public Contract Code or focus papers means any publication that meets all of the following criteria:

(1) has an orientation relating to disabled veteran business enterprise(s);

(2) is known and used by members of the disabled veteran business enterprise community;

(3) primarily offers articles, editorials (if any), and advertisements of business opportunities aimed at disabled veteran business enterprises; and

(4) is available within the geographic area for which the advertisement is placed and for which the services are to be performed.

(n) The term "participation goal" or "goal" means a numerically expressed DVBE objective that bidders are required to make efforts to achieve in accordance with Section 10115(c) of the Public Contract Code.

(o) The term "solicitation" means an announcement to bidders describing a specific purchase or contracting opportunity and its requirements, and which invites bidders to submit offers in response thereto. Such announcements may include, but are not limited to: Invitations for Bid (IFB), Requests for Proposals (RFP), Requests for Qualifications or Request for Quotation (RFQ), or Price Requests.

(p) The term "Statutory Disability" as it is used in this Subchapter means a service–connected disability enumerated under Title 38, United States Code, Section 1114.

(q) The term "trade paper" used in Section 10115.2(b)(3) of the Public Contract Code means a publication that meets all of the following criteria:

(1) has a business orientation relating to the trade or industry for which the advertisement is being placed;

(2) is known and used by members of that trade or industry;

(3) primarily offers articles, editorials (if any), and advertisements of business opportunities aimed at that trade or industry; and,

(4) is available within the geographic area for which the advertisement is placed and for which the services are to be performed.

(r) The term "veteran with a service–connected disability" means the United States Department of Veterans Affairs or United States Department of Defense has declared that the veteran is currently 10 percent or more disabled as a result of service in the armed forces.

NOTE: Authority cited: Sections 14600 and 14615, Government Code. Sections 2052, 10115.3(b) and 10295, Public Contract Code; Section 999.5(b), Military and Veterans Code. Reference: Sections 10115, 10115.1, 10115.2, 10115.3, 10115.5 and 10295, Public Contract Code; and Section 999, Military and Veterans Code; and *Monterey Mechanical Co. v. Wilson*, 125 F.3d 702 (9th Cir. 1997), rehearing denied, ___ F.3d ____ (March 9, 1998).

HISTORY

1. New section filed 4–16–90; operative 5–16–90 (Register 90, No. 18).
2. New subsection (e) filed 12–16–91 as an emergency; operative 12–16–91 (Register 92, No. 13). A Certificate of Compliance must be transmitted to OAL 4–14–92 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 12–16–92 order including amendment of NOTE and subsection (e)(2) transmitted to OAL 4–10–92 and filed 5–22–92 (Register 92, No. 22).
4. Amendment of section and NOTE filed 11–4–93 as an emergency; operative 11–4–93 (Register 93, No. 45). A Certificate of Compliance must be transmitted to OAL by 3–7–94 or emergency language will be repealed by operation of law on the following day.
5. Amendment of section and NOTE refiled 2–23–94 as an emergency; operative 2–23–94 (Register 94, No. 8). A Certificate of Compliance must be transmitted to OAL by 6–23–94 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 2–23–94 order transmitted to OAL 6–23–94 with amendment of text and NOTE and filed 8–5–94 (Register 94, No. 31).
7. Editorial correction amending subsection (e) (Register 94, No. 39).
8. Change without regulatory effect amending section and NOTE filed 4–30–98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 20).

§ 1896.62. Disabled Veteran Business Enterprise (DVBE) Participation Goals.

(a) The disabled veteran business enterprise participation program goal established in Public Contract Code Section 10115(c) applies to the overall annual expenditures of the awarding department for contracts as defined by Section 1896.61(e), Subchapter 10.5, Title 2 of the California Code of Regulations.

(b) The director of the awarding department may establish a participation goal either less than or in excess of the statutory goal of 3 percent DVBE(s) for a specific solicitation, project or contract as long as the overall goal of 3 percent DVBE(s) is satisfied as defined by Section 10115(c) of the Public Contract Code.

(c) To qualify as a responsive bidder for contracts awarded as the result of a solicitation process when DVBE participation goal is specified, in addition to meeting all other technical and/or administrative requirements specified in the solicitation, a bidder must document in the bidder's response to the solicitation, at or prior to the time of bid opening, that the bidder made a commitment to fulfill the participation goal, or made a good faith effort to meet the participation goal.

(d) Except as may be changed by Section 1896.62(b), the requirement for satisfying the participation goal shall be deemed to have been met if a bidder:

(1) Is a disabled veteran business enterprise and is committed to perform not less than 3 percent of the dollar amount of the bid with its own forces, or in combination with those of other disabled veteran business enterprises; or

(2) Is a non–DVBE and is committed to use DVBE(s) for not less than 3 percent of the dollar amount of the bid response.

(e) The awarding department shall find that the DVBE combination or joint venture has met the requirements for the participation goal providing the DVBE combination or joint venture satisfies all of the following conditions:

(1) A bidder uses the DVBE status of the bidder's joint venture partner(s) to meet the participation goal; and

(2) Each DVBE joint venture partner used to satisfy the participation goal also satisfies the 51% ownership and/or control requirements for status as a DVBE as an independent enterprise outside the joint venture; and

(3) Each DVBE joint venture partner is responsible for a clearly defined portion of the work, identified both as a task and as a percentage share/dollar amount of the overall project/response to the solicitation. The goal attainment claimed in the response to the solicitation cannot exceed the percentage share of the work to be performed by each DVBE partner as claimed in the joint venture agreement.

(4) If the DVBE combination or joint venture bidder/contractor is unable to satisfy the goal of 3 percent DVBE, using any one of its joint venture partners, the DVBE combination or joint venture bidder/contractor will satisfy the goal as prescribed in Section 1896.62(d). If unable to satisfy the goal the DVBE combination or joint venture bidder/contractor will conduct a good faith effort as prescribed in Section 1896.63.

(f) The bidder's authorized representative shall

(1) list the name of each DVBE firm proposed for use in the performance of the contract;

(2) list the percentage share/dollar amount of the overall contract to be performed by each DVBE; and

(3) describe the task to be performed by such DVBE.

NOTE: Authority cited: Sections 14600 and 14615, Government Code; and Sections 10115.3(b) and 10295, Public Contract Code; and Section 999.5(b), Military and Veterans Code. Reference: Sections 10115 and 10115.2, Public Contract Code; and Section 999(g) and (i), Military and Veterans Code; and *Monterey Mechanical Co. v. Wilson*, 125 F.3d 702 (9th Cir. 1997), rehearing denied, ___ F.3d ____ (March 9, 1998).

HISTORY

1. New section filed 4–16–90; operative 5–16–90 (Register 90, No. 18).
2. Amendment of section heading, text and NOTE filed 11–4–93 as an emergency; operative 11–4–93 (Register 93, No. 45). A Certificate of Compliance must be transmitted to OAL by 3–7–94 or emergency language will be repealed by operation of law on the following day.

3. Amendment of section heading, text and NOTE refiled 2–23–94 as an emergency; operative 2–23–94 (Register 94, No. 8). A Certificate of Compliance must be transmitted to OAL by 6–23–94 or emergency language will be repealed by operation of law on the following day.
4. Editorial correction designating subsection (g) (Register 94, No. 8).
5. Certificate of Compliance as to 2–23–94 order transmitted to OAL 6–23–94 with amendment of text and NOTE and filed 8–5–94 (Register 94, No. 31).
6. Change without regulatory effect amending section and NOTE filed 4–30–98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 20).

§ 1896.63. Good Faith Effort.

(a) Bidders must satisfy the good faith effort requirement (unless goal is met) at the time of bid opening.

(b) If the participation goal is not met, the bidder shall comply with the requirements of Section 10115.2(b)(1) through (5) including (3) unless the advertising requirements of that subsection are waived by the awarding department. The awarding department shall require documentation of that compliance in the solicitation document. The bidder shall submit documentation of that compliance with the bid.

(c) The awarding department shall evaluate the effort made by the bidder to seek out and consider disabled veteran business enterprises as potential subcontractors for services, materials, labor, supplies or equipment.

In evaluating such effort, the awarding department shall require written evidence that the bidder completed the actions specified in Public Contract Code Section 10115.2(b)(1), (2), (4), and (5). Unless the awarding department waived the advertising requirement, the written evidence must also include advertising as specified in Section 10115.2(b)(3).

Based on this evaluation, the awarding department, in its sole discretion, may find that the bidder has met the good faith effort requirement.

(d) Unless it waives the good faith effort advertising requirements of Section 10115.2(b)(3) of the Public Contract Code, the awarding department shall require that:

(1) Bidders must advertise in trade papers disabled veteran business enterprise focus papers, as specified in the solicitation. Trade papers and disabled veteran business enterprise focus papers as defined in Section 1896.61 must be acceptable to the awarding department.

(2) Unless otherwise specified in the solicitation document, bidders must publish advertisements in trade and focus publications at least 14 calendar days prior to the due date of the response to the solicitation. (Awarding departments may waive the advertising requirement or establish an advertising period of less than 14 calendar days if time limits do not permit a 14 day advertising period.)

(3) Solicitation documents must contain one of the following:

(A) The Office of Small and Minority Business (OSMB) Resource Packet for trade and focus publications; or

(B) A list of trade and focus publications specific to the business of the awarding department; or

(C) The following paragraph:

In accordance with Public Contract Code Section 10115.2(b)(3), bidders must advertise in trade and focus publications unless the DVBE goal is satisfied. The Office of Small and Minority Business (OSMB) publishes a list of trade and focus publications to assist bidders in meeting these contract requirements. To obtain this list, please contact the OSMB and request the "Resource Packet". The OSMB may be contacted at:

(Awarding Department to list current address and telephone number of OSMB.)

NOTE: Authority cited: Sections 14600 and 14615, Government Code; and Sections 10115.3(b) and 10295, Public Contract Code, and Section 999.5(b), Military and Veterans Code. Reference: Sections 10115 and 10115.2, Public Contract Code; and Section 999.5(b), Military and Veterans Code; and *Monterey Mechanical Co. v. Wilson*, 125 F.3d 702 (9th Cir. 1997), rehearing denied, ___ F.3d ___ (March 9, 1998).

HISTORY

1. New section filed 4–16–90; operative 5–16–90 (Register 90, No. 18).
2. Amendment of section and NOTE filed 11–4–93 as an emergency; operative 11–4–93 (Register 93, No. 45). A Certificate of Compliance must be transmitted to OAL by 3–7–94 or emergency language will be repealed by operation of law on the following day.
3. Amendment of section and NOTE refiled 2–23–94 as an emergency; operative 2–23–94 (Register 94, No. 8). A Certificate of Compliance must be transmitted to OAL by 6–23–94 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 2–23–94 order transmitted to OAL 6–23–94 with amendment of subsection (a), new subsection (b) and subsection resdesignation, and amendment of subsections (d)(1) and (d)(3)(C) filed 8–5–94 (Register 94, No. 31).
5. Change without regulatory effect amending section and NOTE filed 4–30–98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 20).

§ 1896.64. Contract Awards.

(a) If a bidder fails to meet the "good faith effort" requirement of Section 1896.63, such bidder shall be deemed not to be a responsive bidder for purposes of an awarding department's evaluation of an award of contract and is thus ineligible for an award. No provision of these regulations, however, shall be deemed to require the awarding department to make an award.

(b) With respect to invitations for bid for the purchase of supplies or equipment pursuant to the provisions of Article 3 of Chapter 2 of Part 2 of Division 2 of the Public Contract Code (commencing with Section 10301) or the acquisition of goods and services pursuant to the provision of Chapter 3 of Part 2 of Division 2 of the Public Contract Code (commencing with Section 12100) where the awarding department has reserved the right to make multiple awards or a single contract award, a bidder shall be deemed responsive regarding the requirement for the making of a good faith effort if there would be compliance with the provisions of Section 1896.63 based on award for a single contract, notwithstanding such bidder may be unable to achieve compliance to meet the established goal if the awarding department exercises the right to make multiple awards.

(c) Substitution of a DVBE

(1) After award of a contract, the successful bidder/contractor must use the DVBE subcontractor(s) and/or supplier(s) proposed in the solicitation response to the State per Section 1896.62 unless a substitution is requested. The bidder/contractor must request the substitution in writing to the awarding department and the awarding department must have approved the substitution in writing. At a minimum the substitution request must include:

(A) A written explanation of the reason for the substitution; and if applicable, the contractor must also include the reason a non–DVBE subcontractor is proposed for use.

(B) A written description of the business enterprise to be substituted, including its business status as a sole proprietorship, partnership, corporation or other entity, and the DVBE certification status of the firm, if any.

(C) A written notice detailing a clearly defined portion of the work identified both as a task and as a percentage share/dollar amount of the overall contract that the substituted firm will perform.

(2) The request for substitution of the DVBE subcontractor/supplier must be approved in writing by the awarding department prior to commencement of any work by the subcontractor/supplier.

(3) The request for substitution of a DVBE and the awarding department's approval or disapproval cannot be used as an excuse for noncompliance with any other provision of law, including, but not limited to, the Subletting and Subcontracting Fair Practices Act (Sections 4100 et seq., Public Contract Code) or any other contract requirements relating to substitution of subcontractors.

(d) Approval by Awarding Department of Contractor's Request for DVBE Substitution

If a contractor requests substitution of its DVBE subcontractor(s)/supplier(s) by providing a written request to the awarding department in accordance with Section 1896.64(c), the awarding department may consent to the substitution of another person as a subcontractor in any of the following situations:

(1) When the subcontractor listed in the bid after having had a reasonable opportunity to do so fails or refuses to execute a written contract,

when that written contract based upon the general terms, conditions, plans and specifications for the project involved or the terms of that subcontractor's written bid, is presented to the subcontractor by the prime contractor.

(2) When the listed subcontractor becomes bankrupt or insolvent, or goes out of business.

(3) When the listed subcontractor fails or refuses to perform his or her subcontract.

(4) When the listed subcontractor fails or refuses to meet the bond requirements of the prime contractor.

(5) When the prime contractor demonstrated to the awarding department, or its duly authorized officer, that the name of the subcontractor was listed as the result of an inadvertent clerical error.

(6) When the listed subcontractor is not licensed pursuant to any applicable licensing requirment of any regulatory agency of the State of California.

(7) When the awarding department, or its duly authorized officer, determines that the work performed by the listed subcontractor is substantially unsatisfactory and not in substantial accordance with the plans and specifications, or that the subcontractor is substantially delaying or disrupting the process of the work.

Prior to approval of the prime contractor's request for the substitution, the awarding department, or its duly authorized officer, shall give notice in writing to the listed subcontractor of the prime contractor's request to substitute and of the reasons for the request. The notice shall be served by certified or registered mail to the last known address of the subcontractor. The listed subcontractor who has been so notified shall have five working days within which to submit written objections to the substitution to the awarding authority. Failure to file these written objections shall constitute the listed subcontractor's consent to the substitution.

If written objections are filed, the awarding authority shall give notice in writing of at least five working days to the listed subcontractor of a hearing by the awarding department on the prime contractor's request for substitution.

NOTE: Authority cited: Sections 14600 and 14615, Government Code; Sections 10115.3(b) and 10295, Public Contract Code; and Section 999.5(b), Military and Veterans Code. Reference: Sections 10115.1 and 10115.2, Public Contract Code; and Sections 999(i) and 999.5(b), Military and Veterans Code; and *Monterey Mechanical Co. v. Wilson*, 125 F.3d 702 (9th Cir. 1997), rehearing denied, ___ F.3d ____ (March 9, 1998).

HISTORY

1. New section filed 4–16–90; operative 5–16–90 (Register 90, No. 18).
2. New subsection (c) and amendment of NOTE filed 11–4–93 as an emergency; operative 11–4–93 (Register 93, No. 45). A Certificate of Compliance must be transmitted to OAL by 3–7–94 or emergency language will be repealed by operation of law on the following day.
3. New subsection (c) and amendment of NOTE refiled 2–23–94 as an emergency; operative 2–23–94 (Register 94, No. 8). A Certificate of Compliance must be transmitted to OAL by 6–23–94 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 2–23–94 order transmitted to OAL 6–23–94 with amendment of subsection (b), repealer and new subsection (c)(1), and amendment of subsections (c)(1)(B)–(C) and NOTE filed 8–5–94 (Register 94, No. 31).
5. New subsection (d) and amendment of NOTE filed 8–5–94 as an emergency; operative 8–5–94 (Register 94, No. 31). A Certificate of Compliance must be transmitted to OAL by 12–3–94 or emergency language will be repealed by operation of law on the following day.
6. Editorial correction amending subsection (d)(7) (Register 94, No. 39).
7. Certificate of Compliance as to 8–5–94 order including amendment of subsection (d)(6) transmitted to OAL 11–4–94 and filed 12–20–94 (Register 94, No. 51).
8. Change without regulatory effect amending section and NOTE filed 4–30–98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 20).

§ 1896.65. Certification by Authorized Representative.

NOTE: Authority cited: Sections 14600 and 14615, Government Code; and Sections 10115.3(b) and 10295, Public Contract Code, Section 999.5(b), Military and Veterans Code. Reference: Sections 2052, 10115.1 and 10115.10, Public Contract Code; and Section 999(g), Military and Veterans Code.

HISTORY

1. New section filed 4–16–90; operative 5–16–90 (Register 90, No. 18).
2. Amendment of section heading, text and NOTE filed 11–4–93 as an emergency; operative 11–4–93 (Register 93, No. 45). A Certificate of Compliance must be transmitted to OAL by 3–7–94 or emergency language will be repealed by operation of law on the following day.
3. Amendment of section heading, text and NOTE refiled 2–23–94 as an emergency; operative 2–23–94 (Register 94, No. 8). A Certificate of Compliance must be transmitted to OAL by 6–23–94 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 2–23–94 order transmitted to OAL 6–23–94 with repealer and new subsection (a) and subsection redesignation, amendment of subsections (b)–(b)(1), (c)–(c)(1), and new subsection (c)(2) filed 8–5–94 (Register 94, No. 31).
5. Change without regulatory effect repealing section filed 4–30–98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 20).

§ 1896.66. Contract Audits.

NOTE: Authority cited: Sections 14600 and 14615, Government Code; and Sections 10115.3(b) and 10295, Public Contract Code. Reference: Section 10115.3(a), Public Contract Code.

HISTORY

1. New section filed 4–16–90; operative 5–16–90 (Register 90, No. 18).
2. Renumbering of former section 1896.66 to section 1896.75 filed 11–4–93 as an emergency; operative 11–4–93 (Register 93, No. 45). A Certificate of Compliance must be transmitted to OAL by 3–7–94 or emergency language will be repealed by operation of law on the following day.
3. Renumbering of former section 1896.66 to section 1896.75 refiled 2–23–94 as an emergency; operative 2–23–94 (Register 94, No. 8). A Certificate of Compliance must be transmitted to OAL by 6–23–94 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 2–23–94 order transmitted to OAL 6–23–94 and filed 8–5–94 (Register 94, No. 31).

§ 1896.67. Adjudicatory and Investigatory Procedures.

NOTE: Authority cited: Sections 14600 and 14615, Government Code; and Sections 10115.3(b) and 10295, Public Contract Code. Reference: Sections 10115.2 and 10115.3(a), Public Contract Code.

HISTORY

1. New section filed 4–16–90; operative 5–16–90 (Register 90, No. 18).
2. Renumbering of former section 1896.67 to section 1896.80 filed 11–4–93 as an emergency; operative 11–4–93 (Register 93, No. 45). A Certificate of Compliance must be transmitted to OAL by 3–7–94 or emergency language will be repealed by operation of law on the following day.
3. Renumbering of former section 1896.67 to section 1896.80 refiled 2–23–94 as an emergency; operative 2–23–94 (Register 94, No. 8). A Certificate of Compliance must be transmitted to OAL by 6–23–94 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 2–23–94 order transmitted to OAL 6–23–94 and filed 8–5–94 (Register 94, No. 31).

§ 1896.68. Appeal of Determination.

NOTE: Authority cited: Sections 14600 and 14615, Government Code; and Section 10115.3(b), Public Contract Code. Reference: Sections 10115.1, 10115.10 and 10295, Public Contract Code.

HISTORY

1. New section filed 12–16–91 as an emergency; operative 12–16–91 (Register 92, No. 13). A Certificate of Compliance must be transmitted to OAL 4–14–92 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 12–16–92 order including amendment of section, designation of subsections (a)–(g), and amendment of NOTE transmitted to OAL 4–10–92 and filed 5–22–92 (Register 92, No. 22).
3. Change without regulatory effect repealing section filed 4–30–98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 20).

§ 1896.70. DVBE Certification.

In order to obtain DVBE certification under this Subchapter, a business concern must do all of the following:

(a) Meet DVBE requirements set forth in this Subchapter and Article 6 (commencing with Section 999) of Chapter 6, Division 4 of the California Military and Veterans Code; and

(b) Provide the following documentation to the Office of Small and Minority Business, no later than five o'clock p.m. (5:00 p.m.) of the bid opening day, unless the regulations (Section 1896 et seq., Title 2, California Code of Regulations) implementing the Small Business Procurement and Contract Act (SBPCA) specify a different time, in which case the submission time for application as identified in the SBPCA shall prevail:

(1) A completed Small Business and/or Disabled Veteran Business Enterprise Certification Application, STD. 812 (as required by Section 1896.95(b)) which is made a part of this regulation; and

(2) A copy of an Award of Entitlement letter from the United States Department of Veterans Affairs or United States Department of Defense which was issued within six (6) months of the date a new certification is sought and which certifies or declares the existence of a service–connected disability of at least 10 percent. In the case of renewal of a DVBE certification, the applicant(s) shall certify in writing that there has been no change in the status of applicant's service–connected disability. In the event that an applicant is seeking certification on the basis of a service–connected Statutory Disability, subsequent renewal of the certification will require that the applicant certify in writing that there has been no change in the status of the service–connected disability.

(c) In reviewing an applicant for, or the validity of a DVBE certification, the Office of Small and Minority Business may require the DVBE applicant to submit additional documents and information that support eligibility to be a certified DVBE.

NOTE: Authority cited: Sections 14600 and 14615, Government Code; Section 999.5(b), Military and Veterans Code, and Sections 10115.3(b) and 10295, Public Contract Code. Reference: Sections 10115.1 and 10115.10, Public Contract Code; and Section 999(g), Military and Veterans Code.

HISTORY

1. New section "Definitions" filed 4–22–91; operative 5–22–91 (Register 91, No. 20).
2. New section "DVBE Certification" filed 11–4–93 as an emergency; operative 11–4–93 (Register 93, No. 45). A Certificate of Compliance must be transmitted to OAL by 3–7–94 or emergency language will be repealed by operation of law on the following day.
3. Change without regulatory effect renumbering former section 1896.70 "Definitions" to section 1896.100 filed 1–27–94 pursuant to title 1, section 100, California Code of Regulations (Register 94, No. 4).
4. Editorial correction restoring inadvertently deleted section "DVBE Certification" (Register 94, No. 5).
5. New section "DVBE Certification" refiled 2–23–94 as an emergency; operative 2–23–94 (Register 94, No. 8). A Certificate of Compliance must be transmitted to OAL by 6–23–94 or emergency language will be repealed by operation of law on the following day.
6. Editorial correction deleting section heading, NOTE and HISTORY for former section 1896.70 "Definitions" and amending HISTORY notes (Register 94, No. 14).
7. Certificate of Compliance as to 2–23–94 order transmitted to OAL 6–23–94 with repealer of subchapter and article headings and amendment of subsections (b)–(b)(1) filed 8–5–94 (Register 94, No. 31).
8. Editorial correction amending subsection (b)(1) (Register 94, No. 39).

§ 1896.71. Worksite Preference/Contract for Goods.

NOTE: Authority cited: Section 7099, Government Code. Reference: Section 7095, Government Code.

HISTORY

1. New section filed 4–22–91; operative 5–22–91 (Register 91, No. 20).
2. Change without regulatory effect renumbering former section 1896.71 to section 1896.101 and repealer of section 1896.71 filed 1–27–94 pursuant to section 100, title 1, California Code of Regulations (Register 94, No. 4).

§ 1896.72. Hiring Preference/Contract for Goods.

NOTE: Authority cited: Section 7099, Government Code. Reference: Section 7095, Government Code.

HISTORY

1. New section filed 4–22–91; operative 5–22–91 (Register 91, No. 20).
2. Change without regulatory effect renumbering former section 1896.72 to section 1896.102 and repealer of section 1896.72 filed 1–27–94 pursuant to section 100, title 1, California Code of Regulations (Register 94, No. 4).

§ 1896.73. Application of Preferences/Contract for Goods.

NOTE: Authority cited: Section 7099, Government Code. Reference: Section 7095, Government Code.

HISTORY

1. New section filed 4–22–91; operative 5–22–91 (Register 91, No. 20).
2. Change without regulatory effect renumbering former section 1896.73 to section 1896.103 and repealer of section 1896.73 filed 1–27–94 pursuant to section 100, title 1, California Code of Regulations (Register 94, No. 4).

§ 1896.74. Worksite Preference/Contract for Services.

NOTE: Authority cited: Section 7099, Government Code. Reference: Section 7095, Government Code.

HISTORY

1. New section filed 4–22–91; operative 5–22–91 (Register 91, No. 20).
2. Change without regulatory effect renumbering former section 1896.74 to section 1896.104 and repealer of section 1896.74 filed 1–27–94 pursuant to section 100, title 1, California Code of Regulations (Register 94, No. 4).

§ 1896.75. Contract Audits.

When an awarding department awards a contract subject to participation goals or good faith effort in accordance with Public Contract Code Section 10115.2, it shall include a provision which in substance provides the following:

Contractor or vendor agrees that the awarding department or its delegatee will have the right to review, obtain, and copy all records pertaining to performance of the contract. Contractor or vendor agrees to provide the awarding department or its delegatee with any relevant information requested and shall permit the awarding department or its delegatee access to its premises, upon reasonable notice, during normal business hours for the purpose of interviewing employees and inspecting and copying such books, records, accounts, and other material that may be relevant to a matter under investigation for the purpose of determining compliance with Public Contract Code Section 10115 et seq. and Title 2, California Code of Regulations, Section 1896.60 et seq. Contractor or vendor further agrees to maintain such records for a period of three (3) years after final payment under the contract.

NOTE: Authority cited: Sections 14600 and 14615, Government Code; and Sections 10115.3(b) and 10295, Public Contract Code. Reference: Section 10115.3(a), Public Contract Code; and *Monterey Mechanical Co. v. Wilson*, 125 F.3d 702 (9th Cir. 1997), rehearing denied, ___ F.3d ____ (March 9, 1998).

HISTORY

1. New section "Hiring Preference/Contract for Services" filed 4–22–91; operative 5–22–91 (Register 91, No. 20).
2. Renumbering of former section 1896.66 "Contract Audits" to section 1896.75 filed 11–4–93 as an emergency; operative 11–4–93 (Register 93, No. 45). A Certificate of Compliance must be transmitted to OAL by 3–7–94 or emergency language will be repealed by operation of law on the following day.
3. Change without regulatory effect renumbering former section 1896.75 "Hiring Preference/Contract for Services" to section 1896.105 filed 1–27–94 pursuant to title 1, section 100, California Code of Regulations (Register 94, No. 4).
4. Renumbering of former section 1896.66 "Contract Audits" to section 1896.75 refiled 2–23–94 as an emergency; operative 2–23–94 (Register 94, No. 8). A Certificate of Compliance must be transmitted to OAL by 6–23–94 or emergency language will be repealed by operation of law on the following day.
5. Editorial correction deleting section heading, NOTE and HISTORY for former section 1896.75 "Hiring Preference/Contract for Services" and amending HISTORY notes (Register 94, No. 14).
6. Certificate of Compliance as to 2–23–94 order transmitted to OAL 6–23–94 with amendment of first paragraph filed 8–5–94 (Register 94, No. 31).
7. Change without regulatory effect amending second paragraph and NOTE filed 4–30–98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 20).

§ 1896.76. Application of Preferences/Contract for Services.

NOTE: Authority cited: Section 7099, Government Code. Reference: Section 7095, Government Code.

HISTORY

1. New section filed 4–22–91; operative 5–22–91 (Register 91, No. 20).
2. Change without regulatory effect renumbering former section 1896.76 to section 1896.106 and repealer of section 1896.76 filed 1–27–94 pursuant to section 100, title 1, California Code of Regulations (Register 94, No. 4).

§ 1896.77. Low Bid or Proposal.

NOTE: Authority cited: Section 7099, Government Code. Reference: Section 7095, Government Code.

HISTORY

1. New section filed 4–22–91; operative 5–22–91 (Register 91, No. 20).
2. Change without regulatory effect renumbering former section 1896.77 to section 1896.107 and repealer of section 1896.77 filed 1–27–94 pursuant to section 100, title 1, California Code of Regulations (Register 94, No. 4).

§ 1896.78. Assistance to Bidders/Department of General Services.

NOTE: Authority cited: Section 7099, Government Code. Reference: Sections 7082, 7095 and 14600, Government Code.

HISTORY

1. New section filed 4–22–91; operative 5–22–91 (Register 91, No. 20).
2. Change without regulatory effect renumbering former section 1896.78 to section 1896.108 and repealer of section 1896.78 filed 1–27–94 pursuant to section 100, title 1, California Code of Regulations (Register 94, No. 4).

§ 1896.79. Assistance to Bidders/Department of Commerce.

NOTE: Authority cited: Section 7099, Government Code. Reference: Sections 7082, 7086 and 7095, Government Code.

HISTORY

1. New section filed 4–22–91; operative 5–22–91 (Register 91, No. 20).
2. Change without regulatory effect renumbering former section 1896.79 to section 1896.109 and repealer of section 1896.79 filed 1–27–94 pursuant to section 100, title 1, California Code of Regulations (Register 94, No. 4).

§ 1896.80. Adjudicatory and Investigatory Procedures.

Nothing in these regulations shall be construed to impair the right of the awarding department or the Department to initiate adjudicatory or investigatory procedures available for the purpose of ensuring compliance with the requirements of Public Contract Code Section 10115, et seq. and Section 999 et seq. of the Military and Veterans Code and attendant rules and regulations.

Prior to reporting an alleged violation of Public Contract Code Section 10115.10 to the DGS, Office of Small and Minority Business, awarding departments shall investigate the alleged violation and shall prepare a written report of their findings. The written report shall also include a recommendation for action to be taken commensurate with the awarding department's findings and shall be submitted to the Office of Small and Minority Business within 60 working days of the notification to the awarding department of the alleged violation.

NOTE: Authority cited: Sections 14600 and 14615, Government Code; and Sections 10115.3(b) and 10295, Public Contract Code; and Section 999.5(b), Military and Veterans Code. Reference: Sections 10115.2, 10115.3(b), and 10115.10, Public Contract Code; and Section 999.9, Military and Veterans Code; and *Monterey Mechanical Co. v. Wilson*, 125 F.3d 702 (9th Cir. 1997), rehearing denied, ___ F.3d ____ (March 9, 1998).

HISTORY

1. New section "Contract Provisions" filed 4–22–91; operative 5–22–91 (Register 91, No. 20).
2. Renumbering and amendment of former section 1896.67 "Adjudicatory and Investigatory Procedures" to section 1896.80 filed 11–4–93 as an emergency; operative 11–4–93 (Register 93, No. 45). A Certificate of Compliance must be transmitted to OAL by 3–7–94 or emergency language will be repealed by operation of law on the following day.
3. Change without regulatory effect renumbering former section 1896.80 "Contract Provisions" to section 1896.110 filed 1–27–94 pursuant to title 1, section 100, California Code of Regulations (Register 94, No. 4).
4. Renumbering and amendment of former section 1896.67 "Adjudicatory and Investigatory Procedures" to section 1896.80 refiled 2–23–94 as an emergency; operative 2–23–94 (Register 94, No. 8). A Certificate of Compliance must be transmitted to OAL by 6–23–94 or emergency language will be repealed by operation of law on the following day.
5. Editorial correction deleting section heading, NOTE and HISTORY for former section 1896.80 "Contract Provisions" and amending HISTORY notes (Register 94, No. 14).
6. Certificate of Compliance as to 2–23–94 order transmitted to OAL 6–23–94 with amendment of text and NOTE and filed 8–5–94 (Register 94, No. 31).
7. Change without regulatory effect amending first paragraph and NOTE filed 4–30–98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 20).

§ 1896.81. Hearings.

NOTE: Authority cited: Section 7099, Government Code. Reference: Section 7097, Government Code.

HISTORY

1. New section filed 4–22–91; operative 5–22–91 (Register 91, No. 20).
2. Change without regulatory effect renumbering former section 1896.81 to section 1896.111 and repealer of section 1896.81 filed 1–27–94 pursuant to section 100, title 1, California Code of Regulations (Register 94, No. 4).

§ 1896.85. Appeal of Determination – DVBE.

(a) All decertifications or denials of certification for DVBE status by the Office of Small and Minority Business shall become final unless the DVBE applicant appeals the determination within 30 calendar days of the date of receipt. If the DVBE applicant believes that the determination will result in the wrongful denial of certification by the Office of Small and Minority Business, the DVBE applicant shall mail, hand–deliver, or transmit a facsimile of a signed and dated appeal in writing to the Director of the DGS. Upon receipt of a written appeal from the DVBE applicant which specifies the reasons for good cause, the Director of the DGS may extend the time for the delivery of the appeal in the interest of justice. The Director may accept an untimely appeal upon a showing of good cause.

(b) When the DGS receives a timely DVBE appeal submitted as prescribed by Section 1896.85(a) of these regulations, a hearing officer appointed by the Director shall resolve the appeal based on written materials or an administrative hearing as determined by the hearing officer. Where the appeal is based upon the decertification of a currently certified DVBE, a hearing officer shall resolve the appeal by an administrative hearing.

(c) In the event of an administrative hearing, a hearing officer for the Department shall set the date, time and location for the hearing and shall notify all interested parties as determined by the hearing officer, at least five (5) calendar days in advance of the hearing. The hearing officer may, upon reasonable notice to interested parties, change the date of, postpone or continue the hearing at the request of an interested party upon showing of good cause or upon its own motion. The location of the hearing shall be at the discretion of the hearing officer and shall be situated for the convenience of all parties.

(d) If the hearing officer is going to determine the appeal through written submissions, the hearing officer shall notify all interested parties. Each of the interested parties notified by the hearing officer may submit a written argument which supports its position. The written argument shall be submitted by the deadline established by the hearing officer.

(e) In the event the hearing officer determines that an appeal is to be determined through written submissions, the hearing officer shall base his/her decision upon the hearing officer's evaluation that oral or additional testimony would be unnecessary for a full understanding of the issues.

(f) Interested parties must submit an original and two copies of any written material to the DGS together with proof of service of a copy to each interested party.

(g) At any time the DGS finds that an appeal is clearly insufficient on its face, entirely without merit, or outside the jurisdiction of the DGS, the hearing officer may dismiss the appeal forthwith.

(h) The powers and responsibilities of the hearing officer, the period allowed for rendering a decision and the form of notice shall be the same as those established by Title 2, Subchapter 1.5, Sections 1195.4, 1195.5 and 1195.6 respectively, of the California Code of Regulations.

NOTE: Authority cited: Sections 14600 and 14615, Government Code; and Sections 10115.3(b) and 10295, Public Contract Code; and Section 999.5(b), Military and Veterans Code. Reference: Sections 10115.1, 10115.10 and 10295, Public Contract Code; and Sections 999(f) and (g), Military and Veterans Code.

HISTORY

1. New section filed 11–4–93 as an emergency; operative 11–4–93 (Register 93, No. 45). A Certificate of Compliance must be transmitted to OAL by 3–7–94 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 2–23–94 as an emergency; operative 2–23–94 (Register 94, No. 8). A Certificate of Compliance must be transmitted to OAL by 6–23–94 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 2–23–94 order transmitted to OAL 6–23–94 with amendment of subsections (a)–(b) and NOTE filed 8–5–94 (Register 94, No. 31).
4. Editorial correction amending subsection (a) (Register 94, No. 39).

§ 1896.90. Reporting Participation Goals.

Data reported by the awarding department as required by Section 10115.5 of the Public Contract Code must be consistent with the regula-

tions governing the awards of the contracts. For contracts with a participation goal, the awards must be reported as claimed by the contractor per Section 1896.62(f). For contracts awarded without a participation goal, the awarding department may report each eligible firm represented in the contract. If it is unknown whether the firm is a certified DVBE, the award(s) must be reported as not qualified.

NOTE: Authority cited: Sections 14600 and 14615, Government Code; Section 10115.3(b), Public Contract Code; and Section 999.5(b), Military and Veterans Code. Reference: Section 10115.5, Public Contract Code; and Section 999.7, Military and Veterans Code; and *Monterey Mechanical Co. v. Wilson*, 125 F.3d 702 (9th Cir. 1997), rehearing denied, ___ F.3d ____ (March 9, 1998).

HISTORY

1. Repealer and new section filed 11–4–93 as an emergency; operative 11–4–93 (Register 93, No. 45). A Certificate of Compliance must be transmitted to OAL by 3–7–94 or emergency language will be repealed by operation of law on the following day.
2. Repealer and new section refiled 2–23–94 as an emergency; operative 2–23–94 (Register 94, No. 8). A Certificate of Compliance must be transmitted to OAL by 6–23–94 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 2–23–94 order transmitted to OAL 6–23–94 including repealer and new section and amendment of NOTE filed 8–5–94 (Register 94, No. 31).
4. Editorial correction amending HISTORY 3 (Register 94, No. 40).
5. Change without regulatory effect amending section and NOTE filed 4–30–98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 20).

§ 1896.91. Disabled Veteran Business Enterprise Goals.

NOTE: Authority cited: Sections 14600 and 14615, Government Code. Section 999.5(b), Military and Veterans Code. Reference: Sections 999(e), 999.2 and 999.4, Military and Veterans Code.

HISTORY

1. New section filed 4–18–91; operative 4–18–91 (Register 91, No. 24).
2. New subsection (c) filed 12–16–91 as an emergency; operative 12–16–91 (Register 92, No. 13). A Certificate of Compliance must be transmitted to OAL 4–14–92 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 12–16–91 order transmitted to OAL 4–10–92 and filed 5–22–92 (Register 92, No. 22).
4. Repealer filed 11–4–93 as an emergency; operative 11–4–93 (Register 93, No. 45). A Certificate of Compliance must be transmitted to OAL by 3–7–94 or emergency language will be repealed by operation of law on the following day.
5. Repealer refiled 2–23–94 as an emergency; operative 2–23–94 (Register 94, No. 8). A Certificate of Compliance must be transmitted to OAL by 6–23–94 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 2–23–94 order transmitted to OAL 6–23–94 and filed 8–5–94 (Register 94, No. 31).

§ 1896.92. Disabled Veteran Business Enterprise Participation.

NOTE: Authority cited: Sections 14600 and 14615, Government Code. Section 999.5(b), Military and Veterans Code. Reference: Sections 999.2 and 999.4, Military and Veterans Code. Section 10115.2, Public Contract Code.

HISTORY

1. New section filed 4–18–91; operative 4–18–91 (Register 91, No. 24).
2. Repealer filed 11–4–93 as an emergency; operative 11–4–93 (Register 93, No. 45). A Certificate of Compliance must be transmitted to OAL by 3–7–94 or emergency language will be repealed by operation of law on the following day.
3. Repealer refiled 2–23–94 as an emergency; operative 2–23–94 (Register 94, No. 8). A Certificate of Compliance must be transmitted to OAL by 6–23–94 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 2–23–94 order transmitted to OAL 6–23–94 and filed 8–5–94 (Register 94, No. 31).
5. Editorial correction removing extraneous history note (Register 94, No. 40).

§ 1896.93. Contract Awards.

NOTE: Authority cited: Sections 14600 and 14615, Government Code. Section 999.5(b), Military and Veterans Code. Reference: Section 999(g), Military and Veterans Code.

HISTORY

1. New section filed 4–18–91; operative 4–18–91 (Register 91, No. 24).
2. Repealer filed 11–4–93 as an emergency; operative 11–4–93 (Register 93, No. 45). A Certificate of Compliance must be transmitted to OAL by 3–7–94 or emergency language will be repealed by operation of law on the following day.
3. Repealer refiled 2–23–94 as an emergency; operative 2–23–94 (Register 94, No. 8). A Certificate of Compliance must be transmitted to OAL by 6–23–94 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 2–23–94 order transmitted to OAL 6–23–94 and filed 8–5–94 (Register 94, No. 31).

§ 1896.94. Certification.

NOTE: Authority cited: Sections 14600 and 14615, Government Code; and Section 999.5(b), Military and Veterans Code. Reference: Section 999(g), Military and Veterans Code.

HISTORY

1. New section filed 4–18–91; operative 4–18–91 (Register 91, No. 24).
2. Amendment of subsection (b) and new subsection (c) filed 12–16–91 as an emergency; operative 12–16–91 (Register 92, No. 13). A Certificate of Compliance must be transmitted to OAL 4–14–92 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 12–16–91 order transmitted to OAL 4–10–92 and filed 5–22–92 (Register 92, No. 22).
4. Repealer filed 11–4–93 as an emergency; operative 11–4–93 (Register 93, No. 45). A Certificate of Compliance must be transmitted to OAL by 3–7–94 or emergency language will be repealed by operation of law on the following day.
5. Repealer refiled 2–23–94 as an emergency; operative 2–23–94 (Register 94, No. 8). A Certificate of Compliance must be transmitted to OAL by 6–23–94 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 2–23–94 order transmitted to OAL 6–23–94 and filed 8–5–94 (Register 94, No. 31).

§ 1896.95. Forms.

The Office of Small and Minority Business shall use the following form for determining certifiable disabled veteran business enterprises: Small Business and/or Disabled Veteran Business Enterprise Certification Application, STD. 812 (Rev. 8–97).

The portions of the STD. 812 concerning disabled veteran business enterprise pertain to the regulations contained in Sections 1896.60 to 1896.95 and are made a part of this regulation (Section 1896.95, Title 2, California Code of Regulations).

The portions of the STD. 812 that specifically relate to small business certification pertain to the Small Business Procurement and Contract Act.

NOTE: Authority cited: Sections 14600 and 14615, Government Code; Section 999.5(b), Military and Veterans Code; and 10115.3, Public Contract Code. Reference: Section 10115.3, Public Contract Code; and Section 999.5(b), Military and Veterans Code; and *Monterey Mechanical Co. v. Wilson*, 125 F.3d 702 (9th Cir. 1997), rehearing denied, ___ F.3d ____ (March 9, 1998).

HISTORY

1. Repealer and new section filed 11–4–93 as an emergency; operative 11–4–93 (Register 93, No. 45). A Certificate of Compliance must be transmitted to OAL by 3–7–94 or emergency language will be repealed by operation of law on the following day. For prior history, see Register 91, No. 24.
2. Repealer and new section refiled 2–23–94 as an emergency; operative 2–23–94 (Register 94, No. 8). A Certificate of Compliance must be transmitted to OAL by 6–23–94 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 2–23–94 order transmitted to OAL 6–23–94 with amendment of subsection (a) and filed 8–5–94 (Register 94, No. 31).
4. Amendment of subsection (b) and NOTE filed 8–5–94 as an emergency; operative 8–5–94 (Register 94, No. 31). A Certificate of Compliance must be transmitted to OAL by 12–3–94 or emergency language will be repealed by operation of law on the following day.
5. Editorial correction amending subsection (a) (Register 94, No. 39).
6. Certificate of Compliance as to 8–5–94 order transmitted to OAL 11–4–94 and filed 12–20–94 (Register 94, No. 51).
7. Change without regulatory effect amending subsection (b) filed 8–1–97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 31).
8. Change without regulatory effect repealing subsection (a) and subsection (b) designator and amending NOTE filed 4–30–98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 20).

§ 1896.96. Adjudicatory and Investigatory Procedures.

NOTE: Authority cited: Sections 14600 and 14615, Government Code. Section 999.5(b), Military and Veterans Code. Reference: Section 999.5(a), Military and Veterans Code.

HISTORY

1. New section filed 4–18–91; operative 4–18–91 (Register 91, No. 24).

2. Repealer filed 11–4–93 as an emergency; operative 11–4–93 (Register 93, No. 45). A Certificate of Compliance must be transmitted to OAL by 3–7–94 or emergency language will be repealed by operation of law on the following day.
3. Repealer refiled 2–23–94 as an emergency; operative 2–23–94 (Register 94, No. 8). A Certificate of Compliance must be transmitted to OAL by 6–23–94 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 2–23–94 order transmitted to OAL 6–23–94 and filed 8–5–94 (Register 94, No. 31).

§ 1896.97. Monitoring Adherence to the Goals.

NOTE: Authority cited: Sections 14600 and 14615, Government Code; Section 999.5(b), Military and Veterans Code. Reference: Section 999.5(a), Military and Veterans Code.

HISTORY

1. New section filed 4–18–91; operative 4–18–91 (Register 91, No. 24).
2. Amendment filed 12–16–91 as an emergency; operative 12–16–91 (Register 92, No. 13). A Certificate of Compliance must be transmitted to OAL 4–14–92 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 12–16–91 order including amendment transmitted to OAL 4–10–92 and filed 5–22–92 (Register 92, No. 22).
4. Repealer filed 11–4–93 as an emergency; operative 11–4–93 (Register 93, No. 45). A Certificate of Compliance must be transmitted to OAL by 3–7–94 or emergency language will be repealed by operation of law on the following day.
5. Repealer refiled 2–23–94 as an emergency; operative 2–23–94 (Register 94, No. 8). A Certificate of Compliance must be transmitted to OAL by 6–23–94 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 2–23–94 order transmitted to OAL 6–23–94 and filed 8–5–94 (Register 94, No. 31).

Subchapter 10.6. DVBE Incentive Program

§ 1896.98. Definitions.

(a) The definitions contained in Section 1896.61 shall apply to this subchapter.

NOTE: Authority cited: Sections 14600 and 14615, Government Code; and Sections 999.5(a) and 999.5(d), Military and Veterans Code. Reference: Section 999.5(a), Military and Veterans Code; and Section 10115(c), Public Contract Code.

HISTORY

1. New subchapter 10.6 (sections 1896.98–1896.99.120) and section filed 10–9–2007; operative 10–9–2007 pursuant to Government Code section 11343.4 (Register 2007, No. 41). For prior history, see Register 94, No. 31.

§ 1896.99.100. Incentive Application.

(a) Whenever an awarding department applies the DVBE program requirement, it shall offer the incentive as outlined in this subchapter for DVBE participation. Other competitive solicitations may also offer this incentive. For departments having met or exceeded the DVBE 3 percent goal for 2 out of the 3 previous years, their highest ranking executive officer or his/her designee may elect to exempt contracts from the DVBE incentive. The 3 most current published DGS annual reports are used to document a department's DVBE participation goal.

(b) The incentive is applied during the evaluation process and is only applied for responsive bids from responsible bidders proposing the percentage(s) of DVBE participation for the incentive(s) specified in the solicitation. Solicitations may provide an incentive scale under which bidders obtaining higher levels of participation qualify for greater incentives.

(c) For award based on low price, the incentive is applied by reducing the bid price by the amount of incentive as computed from the lowest responsive and responsible bid price. The computation is for evaluation purposes only. Application of the incentive shall not displace an award to a small business with a non–small business.

(d) For award based on high score, the incentive points are included in the sum of non–cost points. The incentive points cannot be used to achieve any applicable minimum point requirements.

NOTE: Authority cited: Sections 14600 and 14615, Government Code; and Sections 999.5(a) and 999.5(d), Military and Veterans Code. Reference: Section 14838(f), Government Code; and Section 999.5(a), Military and Veterans Code.

HISTORY

1. New section filed 10–9–2007; operative 10–9–2007 pursuant to Government Code section 11343.4 (Register 2007, No. 41).

§ 1896.99.120. Incentive Amount.

(a) For award based on low price, the minimum incentive is 1 percent with or without a cap. Use of a higher incentive percentage(s) not to exceed 5 percent is allowed for a solicitation based upon the need to meet participation goals. For each solicitation, awarding departments' highest ranking executive officer or his/her designee may elect to place a cap of not less than $100,000 on the incentive and/or a cap of not less than $100,000 for all combined incentives and preferences.

(b) For award based on high score, the incentive(s) shall not exceed 5 percent, nor be less than 1 percent of total possible available points, not including points for socioeconomic incentives or preferences.

NOTE: Authority cited: Sections 14600 and 14615, Government Code; and Sections 999.5(a) and 999.5(d), Military and Veterans Code. Reference: Section 999.5(a), Military and Veterans Code.

HISTORY

1. New section filed 10–9–2007; operative 10–9–2007 pursuant to Government Code section 11343.4 (Register 2007, No. 41).

Subchapter 11. Employment and Economic Incentive Act Contract Preferences

Article 1.

§ 1896.100. Definitions.

As used in these rules and regulations:

(a) "The Act" means the Employment and Economic Incentive Act, commencing with section 7080 of the California Government Code.

(b) "Hire" means to employ on a full–time basis a person or persons for the purpose of performing a contract in accordance with the provisions of the Act.

(c) "Contract for goods" means a contract for the purchase of materials, equipment, and supplies, but excluding a contract with a governmental entity.

(d) "Contract for services" means a contract for the rendering of personal or consultant services, but excluding a contract with a governmental entity. For the purpose of this definition, personal services shall be construed liberally so as to include services requiring little or no discretion, such as but not limited to, blueprinting, photofinishing, laboratory analysis, automobile repairs, office equipment repairs, and reproduction services.

(e) "False Certification" means a certification which, either by omission or inclusion, the certifying party knows to be false or should have known to be false.

(f) "California–based company" means a corporation or business, of which the principal office is located in California, and the owners, or officers if the firm is a corporation, are domiciled in California.

(g) "50 percent of the labor required" means one–half of the total employee hours needed to perform the contract involved. In computing total employee hours with respect to a contract for goods, the employee hours required for manufacturing the goods offered shall be included regardless of whether a bidder is or is not the manufacturer of the goods.

(h) "Work force" as expressed in the Act means the total number of employees required to directly fulfill the contract requirements as they are set forth in the specifications and/or instructions at the time that bids are solicited by the State. As used herein the term "work force" shall not include labor or services which are merely incidental to the performance of the contract. This exclusion shall include labor and/or services which are considered administrative overhead/support that is not directly allocated to and budgeted for the performance of the state contract for which a hiring preference, authorized by sections(s) 7095(b) or 7095(d) of the Act, is granted.

(i) "Lowest responsible bid or proposal" means that bid or proposal which pursuant to the criteria contained in the solicitation document would be entitled to contract award without regard to any preference.

(j) "Program area," in addition to the definition contained in Government Code section 7082(i), shall also mean an enterprise zone established in accordance with the Enterprise Zone Act commencing with section 7070 of the Government Code.

NOTE: Authority cited: Section 7099, Government Code. Reference: Sections 7080, 7082, 7095 and 7097, Government Code.

HISTORY

1. Change without regulatory effect renumbering former section 1896.70 to section 1896.100 filed 1–27–94 pursuant to section 100, title 1, California Code of Regulations (Register 94, No. 4).
2. Relocation of subchapter 11 heading and relocation and amendment of article 1 heading filed 8–5–94; operative 8–5–94 (Register 94, No. 31).

§ 1896.101. Worksite Preference/Contract for Goods.

Whenever a state agency prepares an invitation for bid (IFB) for a contract for the purchase of goods, the cost of which is estimated to be in excess of $100,000, except a contract where the worksite will be fixed by the terms of the contract, provision shall be made in the IFB for a 5–percent preference for California–based companies who certify under penalty of perjury that no less than 50 percent of the labor required to perform the contract shall be accomplished at a worksite or worksites located in a program area.

NOTE: Authority cited: Section 7099, Government Code. Reference: Section 7095, Government Code.

HISTORY

1. Change without regulatory effect renumbering former section 1896.71 to section 1896.101 filed 1–27–94 pursuant to section 100, title 1, California Code of Regulations (Register 94, No. 4).

§ 1896.102. Hiring Preference/Contract for Goods.

Where a bidder complies with the provisions of rule 1896.71 the state shall award additional preferences ranging from 1–percent to 4–percent in accordance with Government Code section 7095(b) if the bidder certifies under penalty of perjury it will hire the specified percentage of persons living in a high density unemployment area or enterprise zone qualified employees during the period of contract performance.

NOTE: Authority cited: Section 7099, Government Code. Reference: Section 7095, Government Code.

HISTORY

1. Change without regulatory effect renumbering former section 1896.72 to section 1896.102 filed 1–27–94 pursuant to section 100, title 1, California Code of Regulations (Register 94, No. 4).

§ 1896.103. Application of Preferences/Contract for Goods.

Preferences provided for by sections 1896.71 and 1896.72 for a contract for goods shall be granted in an amount equal to a corresponding percentage of the lowest responsible bid: provided, however, that for contract award purposes the total of any preferences for which the low responsible bidder qualifies under any provision of law shall be deducted from the total of any preferences to which a higher bidder may be entitled.

NOTE: Authority cited: Section 7099, Government Code. Reference: Section 7095, Government Code.

HISTORY

1. Change without regulatory effect renumbering former section 1896.73 to section 1896.103 filed 1–27–94 pursuant to section 100, title 1, California Code of Regulations (Register 94, No. 4).

§ 1896.104. Worksite Preference/Contract for Services.

Whenever a state agency prepares an IFB or a request for proposals (RFP) for a contract for services, the cost of which is estimated to be in excess of $100,000, except an IFB or a RFP where the worksite is fixed by the terms of the contract, provision shall be made in the IFB or the RFPfor a 5–percent preference on the price submitted by California–based companies who certify under penalty of perjury that they shall perform the contract at a worksite or worksites located in a program area.

NOTE: Authority cited: Section 7099, Government Code. Reference: Section 7095, Government Code.

HISTORY

1. Change without regulatory effect renumbering former section 1896.74 to section 1896.104 filed 1–27–94 pursuant to section 100, title 1, California Code of Regulations (Register 94, No. 4).

§ 1896.105. Hiring Preference/Contract for Services.

Where a bidder complies with the provisions of rule 1896.74 the state shall award additional preferences ranging from 1–percent to 4–percent in accordance with Government Code section 7095(d) if the bidder certifies under penalty of perjury it will hire the specified percentages of persons living in high density unemployment areas or enterprise zone qualified employees for contract performance.

NOTE: Authority cited: Section 7099, Government Code. Reference: Section 7095, Government Code.

HISTORY

1. Change without regulatory effect renumbering former section 1896.75 to section 1896.105 filed 1–27–94 pursuant to section 100, title 1, California Code of Regulations (Register 94, No. 4).

§ 1896.106. Application of Preferences/Contract for Services.

Preferences provided for by sections 1896.74 and 1896.75 for a contract for services shall be granted in an amount equal to a corresponding percentage of the price offered by the lowest responsible bid or the lowest responsible proposal: provided, however, that for contract award purposes the total of any preferences for which the low responsible bidder qualifies under any provision of law shall be deducted from the total of any preferences to which a higher bidder may be entitled.

NOTE: Authority cited: Section 7099, Government Code. Reference: Section 7095, Government Code.

HISTORY

1. Change without regulatory effect renumbering former section 1896.76 to section 1896.106 filed 1–27–94 pursuant to section 100, title 1, California Code of Regulations (Register 94, No. 4).

§ 1896.107. Low Bid or Proposal.

No preference provided for under the Act shall be granted unless the lowest responsible bid or proposal received is in excess of $100,000: provided, further, that if a state awarding authority has reserved the right in its Invitation for Bids or Request for Proposals to award multiple contracts on the basis of individual items, no preference provided for under the Act shall be granted for the purpose of a multiple contract award unless the lowest responsible bid or proposal submitted for a particular individual item or group of items that is the basis for contract award, is in excess of $100,000.

NOTE: Authority cited: Section 7099, Government Code. Reference: Section 7095, Government Code.

HISTORY

1. Change without regulatory effect renumbering former section 1896.77 to section 1896.107 filed 1–27–94 pursuant to section 100, title 1, California Code of Regulations (Register 94, No. 4).

§ 1896.108. Assistance to Bidders/Department of General Services.

The Department of General Services with the cooperation of the Department of Commerce shall assist prospective bidders in identifying those areas of the state which qualify as program areas under the Act.

NOTE: Authority cited: Section 7099, Government Code. Reference: Sections 7082, 7095 and 14600, Government Code.

HISTORY

1. Change without regulatory effect renumbering former section 1896.78 to section 1896.108 filed 1–27–94 pursuant to section 100, title 1, California Code of Regulations (Register 94, No. 4).

§ 1896.109. Assistance to Bidders/Department of Commerce.

The Department of Commerce shall assist prospective bidders in identifying persons living in high density unemployment areas or enterprise Zone qualified employees under the Act and provide technical information on state hiring tax credits.

NOTE: Authority cited: Section 7099, Government Code. Reference: Sections 7082, 7086 and 7095, Government Code.

HISTORY

1. Change without regulatory effect renumbering former section 1896.79 to section 1896.109 filed 1–27–94 pursuant to section 100, title 1, California Code of Regulations (Register 94, No. 4).

§ 1896.110. Contract Provisions.

All IFB's and RFP's and contracts prepared by a state agency relative to contracts for goods or for services which will, or are estimated to exceed $100,000 in cost, and which are subject to the provisions of the Act, will include either expressly or by reference the following:

(a) Contractor or vendor agrees to comply with the requirements of the Employment and Economic Incentive Act (Government Code section 7080, et seq.) and attendant rules and regulations. (Title 2, California Code of Regulations, section 1896.70, et seq.).

(b) Contractor or vendor agrees that the state contracting agency, or its delegee, will have the right to review, obtain, and copy all records pertaining to performance of the contract. Contractor or vendor agrees to provide the state contracting agency or its delegee with any relevant information requested and shall permit the state contracting agency or its delegee access to its premises, upon reasonable notice, during normal business hours for the purpose of interviewing employees and inspecting and copying such books, records, accounts, and other material that maybe relevant to a matter under investigation for the purpose of determining compliance with the Act and attendant rules and regulations. Contractor or vendor further agrees that such records shall be maintained for a period of three (3) years after final payment under the contract.

(c) Contractor or vendor agrees with respect to a certification to hire persons living in a high density unemployment area or enterprise zone qualified employees, to:

(1) Act in good faith for the purpose of maintaining such persons as employees for the duration of contract performance; and

(2) To make a reasonable effort to replace such persons, who for any reason permanently cease to be on the payroll, with other persons living in a high density unemployment area or enterprise zone qualified employees; and

(3) To promptly report to the state contracting agency and thereafter confirm in writing within seven (7) days the names of any such persons who have been terminated or absent from work for more than three (3) consecutive work days and to communicate the reasons for the termination or absence. The contractor or vendor agrees under such circumstances to consult with the state contracting agency and the Department of Commerce with respect to replacement of such persons.

NOTE: Authority cited: Section 7099, Government Code. Reference: Section 7096, Government Code.

HISTORY

1. Change without regulatory effect renumbering former section 1896.80 to section 1896.110 filed 1–27–94 pursuant to section 100, title 1, California Code of Regulations (Register 94, No. 4).

§ 1896.111. Hearings.

The state contracting agency shall be responsible for conducting the hearings authorized by Government Code section 7097 relative to contract awards obtained due to the furnishing of a false certification. The state contracting agency may enter into an agreement for the purpose of having another state agency or office conduct such hearings and to furnish the state contracting agency with a report of findings and a recommendation.

NOTE: Authority cited: Section 7099, Government Code. Reference: Section 7097, Government Code.

HISTORY

1. Change without regulatory effect renumbering former section 1896.81 to section 1896.111 filed 1–27–94 pursuant to section 100, title 1, California Code of Regulations (Register 94, No. 4).

Subchapter 11.5. Contracts Awarded Without Competition

§ 1896.200. Definitions.

NOTE: Authority cited: Section 14600, Government Code; Sections 10340, 10348, 10373 and 10380, Public Contract Code. Reference: Sections 10340, 10348, 10373 and 10380, Public Contract Code.

HISTORY

1. New subchapter 11.5 (sections 1896.200–1896.203) and section filed 9–21–98 as an emergency; operative 9–21–98 (Register 98, No. 39). A Certificate of Compliance must be transmitted to OAL by 1–19–99 or emergency language will be repealed by operation of law on the following day.
2. Repealer of subchapter 11.5 (sections 1896.200–1896.203) and repealer of section by operation of Government Code section 11346.1(g) (Register 99, No. 14).

§ 1896.201. Contracts Not Requiring Competition.

NOTE: Authority cited: Section 14600, Government Code; Sections 10340, 10348, 10373 and 10380, Public Contract Code. Reference: Sections 10340, 10348, 10373 and 10380, Public Contract Code.

HISTORY

1. New section filed 9–21–98 as an emergency; operative 9–21–98 (Register 98, No. 39). A Certificate of Compliance must be transmitted to OAL by 1–19–99 or emergency language will be repealed by operation of law on the following day.
2. Repealed by operation of Government Code section 11346.1(g) (Register 99, No. 14).

§ 1896.202. Reasonableness of Contract Costs.

NOTE: Authority cited: Section 14600, Government Code; Sections 10340, 10348, 10373 and 10380, Public Contract Code. Reference: Sections 10340, 10348, 10373 and 10380, Public Contract Code.

HISTORY

1. New section filed 9–21–98 as an emergency; operative 9–21–98 (Register 98, No. 39). A Certificate of Compliance must be transmitted to OAL by 1–19–99 or emergency language will be repealed by operation of law on the following day.
2. Repealed by operation of Government Code section 11346.1(g) (Register 99, No. 14).

§ 1896.203. State's Best Interests.

NOTE: Authority cited: Section 14600, Government Code; Sections 10340, 10348, 10373 and 10380, Public Contract Code. Reference: Sections 10340, 10348, 10373 and 10380, Public Contract Code.

HISTORY

1. New section filed 9–21–98 as an emergency; operative 9–21–98 (Register 98, No. 39). A Certificate of Compliance must be transmitted to OAL by 1–19–99 or emergency language will be repealed by operation of law on the following day.
2. Repealed by operation of Government Code section 11346.1(g) (Register 99, No. 14).

Subchapter 12. Personal Services Contracts

§ 1896.300. Definitions.

For purposes of complying with Government Code Section 19134, the following definitions apply:

(a) A "Qualifying Contract" is any contract meeting the following conditions:

(1) A contract executed by a state agency with a provider of personal services, and

(2) The contract is in force for 91 days or more, and

(3) The contract includes janitorial, housekeeping, custodian, food service, security guard, laundry or window cleaning services.

(b) "Covered Employee" means a person who performs any of the services identified in 1896.300(a)(3), above, as more than an incidental part of their duties under a Qualifying Contract. Covered Employee does not include either:

(1) A person who performs solely supervisory or administrative services under a Qualifying Contract, or

(2) An owner–operator.

(c) "Employee Benefits" means coverage a contractor provides to a Covered Employee, either through a purchased plan or by self–insurance, for:

(1) Basic health care, as identified in 28 CCR Section 1300.67, and

(2) Dental services, and

(3) Vision services.

(d) "Cash Payment" means a dollar amount a contractor pays to a Covered Employee on a Qualifying Contract in lieu of providing Employee Benefits.

NOTE: Authority cited: Section 19134(f), Government Code. Reference: Section 19134(a), (b), (c)(2), (d) and (g), Government Code.

HISTORY

1. New subchapter 12 (sections 1896.300–1896.370) and section filed 12–29–2000 as an emergency; operative 1–1–2001 (Register 2000, No. 52). A Certificate of Compliance must be transmitted to OAL by 5–1–2001 or emergency language will be repealed by operation of law on the following day.
2. New subchapter 12 (sections 1896.300–1896.370) and section refiled 4–30–2001 as an emergency; operative 4–30–2001 (Register 2001, No. 18). A Certificate of Compliance must be transmitted to OAL by 8–28–2001 or emergency language will be repealed by operation of law on the following day.
3. New subchapter 12 (sections 1896.300–1896.370) and section refiled 8–16–2001 as an emergency; operative 8–16–2001 (Register 2001, No. 33). A Certificate of Compliance must be transmitted to OAL by 12–14–2001 or emergency language will be repealed by operation of law on the following day.
4. New subchapter 12 (sections 1896.300–1896.370) and section refiled 12–12–2001 as an emergency; operative 12–15–2001 (Register 2001, No. 50). A Certificate of Compliance must be transmitted to OAL by 4–15–2002 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 12–12–2001 order, including amendment of subsections (b)–(b)(2) and (c)(1), transmitted to OAL 4–15–2002 and filed 5–28–2002 (Register 2002, No. 22).

§ 1896.310. Contractor Requirements.

In order to comply with Government Code Section 19134, a contractor entering into a Qualifying Contract shall provide one of the following:

(a) Employee Benefits to Covered Employees costing not less than 85 percent of the state cost for employee benefits for a State of California employee performing similar work; or

(b) Cash Payments to Covered Employees of an amount not less than 85 percent of the state cost for employee benefits for a State of California employee performing similar work; or

(c) A combination of Employee Benefits and Cash Payments totaling not less than 85 percent of the state cost for employee benefits for a State of California employee performing similar work.

NOTE: Authority cited: Section 19134(f), Government Code. Reference: Section 19134(a) and (d), Government Code.

HISTORY

1. New section filed 12–29–2000 as an emergency; operative 1–1–2001 (Register 2000, No. 52). A Certificate of Compliance must be transmitted to OAL by 5–1–2001 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 4–30–2001 as an emergency; operative 4–30–2001 (Register 2001, No. 18). A Certificate of Compliance must be transmitted to OAL by 8–28–2001 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 8–16–2001 as an emergency; operative 8–16–2001 (Register 2001, No. 33). A Certificate of Compliance must be transmitted to OAL by 12–14–2001 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 12–12–2001 as an emergency; operative 12–15–2001 (Register 2001, No. 50). A Certificate of Compliance must be transmitted to OAL by 4–15–2002 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 12–12–2001 order, including amendment of subsections (a)–(c), transmitted to OAL 4–15–2002 and filed 5–28–2002 (Register 2002, No. 22).

§ 1896.320. Benefits and Cash Payment Calculations.

State agencies shall refer to the Department of Personnel Administration's Schedule of Employee Benefit Rates (published online by February 1 of each year at www.dpa.ca.gov) to determine the required Employee Benefit and/or Cash Payment amounts for Qualifying Contracts. Each agency shall select for any Qualifying Contract either the Detailed Rates or the Blended Rate appearing on the most recent Schedule. Detailed Rates and Blended Rates are calculated as specified in subsections (a) and (b) below:

(a) Detailed Rates

Detailed rates consist of the State of California costs for employee benefits per employee per month for employees performing services specified in 1896.300(a)(3), and a calculation of 85 percent of these costs per employee per hour. These costs will be provided for three coverage categories: a single employee with no covered dependents, an employee with one covered dependent, and an employee with two or more covered dependents.

Detailed hourly rates are calculated by determining the costs per hour for each of the three coverage categories defined in (a), using the following steps:

(1) Add together the monthly state costs for health benefits, dental benefits and vision benefits for state employees in each of the categories listed above who perform services listed in 1896.300(a)(3); and

(2) Divide the monthly state costs per employee obtained from (a)(1) above by 173.333.

(b) Blended Rates

Blended rates consist of the average of State of California employee benefit costs per employee per month for all employees performing the services specified in 1896.300(a)(3), and a calculation of 85 percent of this cost per employee per hour.

Blended hourly rates, based on the average cost per hour for all employees in all categories, are calculated by the following steps:

(1) Add together the monthly state costs for health benefits, dental benefits and vision benefits for all state employees who perform services listed in 1896.300(a)(3); and

(2) Divide the monthly costs per employee obtained from (b)(1) above by 173.333.

NOTE: Authority cited: Section 19134(f), Government Code. Reference: Section 19134(a), (c)(1) and (c)(2), Government Code.

HISTORY

1. New section filed 12–29–2000 as an emergency; operative 1–1–2001 (Register 2000, No. 52). A Certificate of Compliance must be transmitted to OAL by 5–1–2001 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 4–30–2001 as an emergency; operative 4–30–2001 (Register 2001, No. 18). A Certificate of Compliance must be transmitted to OAL by 8–28–2001 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 8–16–2001 as an emergency; operative 8–16–2001 (Register 2001, No. 33). A Certificate of Compliance must be transmitted to OAL by 12–14–2001 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 12–12–2001 as an emergency; operative 12–15–2001 (Register 2001, No. 50). A Certificate of Compliance must be transmitted to OAL by 4–15–2002 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 12–12–2001 order, including amendment of section, transmitted to OAL 4–15–2002 and filed 5–28–2002 (Register 2002, No. 22).

§ 1896.330. Reimbursement to State Agencies.

State agencies may refer to applicable Department of Finance Budget Letters for budget instructions regarding reimbursements to state agencies for the costs of Employee Benefits and/or Cash Payments under Qualifying Contracts.

NOTE: Authority cited: Section 19134(f), Government Code. Reference: Section 19134(c)(1) and (f), Government Code.

HISTORY

1. New section filed 12–29–2000 as an emergency; operative 1–1–2001 (Register 2000, No. 52). A Certificate of Compliance must be transmitted to OAL by 5–1–2001 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 4–30–2001 as an emergency, including further amendment; operative 4–30–2001 (Register 2001, No. 18). A Certificate of Compliance must be transmitted to OAL by 8–28–2001 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 8–16–2001 as an emergency; operative 8–16–2001 (Register 2001, No. 33). A Certificate of Compliance must be transmitted to OAL by 12–14–2001 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 12–12–2001 as an emergency, including further amendment; operative 12–15–2001 (Register 2001, No. 50). A Certificate of Compliance must be transmitted to OAL by 4–15–2002 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 12–12–2001 order, including amendment of section heading and section, transmitted to OAL 4–15–2002 and filed 5–28–2002 (Register 2002, No. 22).

§ 1896.340. Qualifying Contract Solicitations.

Solicitations for Qualifying Contracts shall include the following provisions requiring compliance with Government Code Section 19134:

(a) Contracting agencies shall notify potential bidders that the contract to be awarded is subject to Government Code Section 19134 and shall

instruct potential bidders to include in their bids provisions for Employee Benefits and/or Cash Payments to all Covered Employees.

(b) Contracting agencies shall identify in the solicitation whether provision for Employee Benefits and/or Cash Payments should be bid by the bidder as part of the cost bid or should be committed to by the bidder as a minimum qualifications requirement.

(c) Contracting agencies shall specify the applicable benefit rate(s) for the contract (based on the current Schedule of Employee Benefits Rates published by the Department of Personnel Administration). If the solicitation specifies that Employee Benefits and/or Cash Payments shall be part of the bidder's cost bid, the rate(s) specified in the solicitation shall be used by bidders for cost bod calculations.

(d) Rate changes published by the Department of Personnel Administration after issuance of a solicitation, but prior to the bid due date, shall be included in an addendum to the solicitation.

NOTE: Authority cited: Section 19134(f), Government Code. Reference: Section 19134(a), (c)(1) and (f), Government Code.

HISTORY

1. New section filed 12–29–2000 as an emergency; operative 1–1–2001 (Register 2000, No. 52). A Certificate of Compliance must be transmitted to OAL by 5–1–2001 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 4–30–2001 as an emergency; operative 4–30–2001 (Register 2001, No. 18). A Certificate of Compliance must be transmitted to OAL by 8–28–2001 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 8–16–2001 as an emergency; operative 8–16–2001 (Register 2001, No. 33). A Certificate of Compliance must be transmitted to OAL by 12–14–2001 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 12–12–2001 as an emergency; operative 12–15–2001 (Register 2001, No. 50). A Certificate of Compliance must be transmitted to OAL by 4–15–2002 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 12–12–2001 order, including amendment of section, transmitted to OAL 4–15–2002 and filed 5–28–2002 (Register 2002, No. 22).

§ 1896.350. Bids for Qualifying Contracts.

Bids for Qualifying Contracts shall include, in addition to all other requirements specified in the solicitation, a commitment by the bidder to comply with the requirements of Government Code Section 19134 and these regulations.

NOTE: Authority cited: Section 19134(f), Government Code. Reference: Section 19134(a), (c)(1), (d) and (f), Government Code.

HISTORY

1. New section filed 12–29–2000 as an emergency; operative 1–1–2001 (Register 2000, No. 52). A Certificate of Compliance must be transmitted to OAL by 5–1–2001 or emergency language will be repealed by operation of law on the following day.
2. Editorial correction of subsection (a)(1) (Register 2001, No. 3).
3. New section refiled 4–30–2001 as an emergency, including renumbering of former section 1896.350 to section 1896.360 and renumbering and amendment of former section 1896.360 to section 1896.350; operative 4–30–2001 (Register 2001, No. 18). A Certificate of Compliance must be transmitted to OAL by 8–28–2001 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 8–16–2001 as an emergency; operative 8–16–2001 (Register 2001, No. 33). A Certificate of Compliance must be transmitted to OAL by 12–14–2001 or emergency language will be repealed by operation of law on the following day.
5. New section refiled 12–12–2001 as an emergency, including renumbering of former section 1896.350 to section 1896.360 and renumbering and amendment of former section 1896.360 to section 1896.350; operative 12–15–2001 (Register 2001, No. 50). A Certificate of Compliance must be transmitted to OAL by 4–15–2002 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 12–12–2001 order, including amendment of section, transmitted to OAL 4–15–2002 and filed 5–28–2002 (Register 2002, No. 22).

§ 1896.360. Requirements for Qualifying Contracts.

(a) Qualifying Contracts shall contain:

(1) A provision mentioning Government Code Section 19134 and the applicable Employee Benefit rate(s) (blended or detailed);

(2) A provision allowing for adjusting Employee Benefits and/or Cash Payment amounts in the event of a change to the Schedule of Employee Benefit Rates published by the Department of Personnel Administration during the term of the contract. Any published rate changes that occur during the term of the contract shall be given effect by contract amendment, with an effective date retroactive to the date rate changes were published by the Department of Personnel Administration;

(3) A provision that the contractor must submit to the contracting agency monthly reports that comply with Section 1896.370(a);

(4) A provision that the contract is subject to audit for compliance with the provisions of Government Code Section 19134; and

(5) A provision stating that that failure to comply with the provisions of Government Code Section 19134 constitutes a material breach, which could subject the contract to immediate termination by the state.

(b) Before execution of the contract, employers choosing to offer Employee Benefits shall provide evidence of coverage to the contracting agency.

NOTE: Authority cited: Section 19134(f), Government Code. Reference: Section 19134(a), (c)(1), (d), (e) and (f), Government Code.

HISTORY

1. New section filed 12–29–2000 as an emergency; operative 1–1–2001 (Register 2000, No. 52). A Certificate of Compliance must be transmitted to OAL by 5–1–2001 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 4–30–2001 as an emergency, including renumbering of former section 1896.360 to section 1896.350 and renumbering and amendment of former section 1896.350 to section 1896.360; operative 4–30–2001 (Register 2001, No. 18). A Certificate of Compliance must be transmitted to OAL by 8–28–2001 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 8–16–2001 as an emergency; operative 8–16–2001 (Register 2001, No. 33). A Certificate of Compliance must be transmitted to OAL by 12–14–2001 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 12–12–2001 as an emergency, including renumbering of former section 1896.360 to section 1896.350 and renumbering and amendment of former section 1896.350 to section 1896.360; operative 12–15–2001 (Register 2001, No. 50). A Certificate of Compliance must be transmitted to OAL by 4–15–2002 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 12–12–2001 order, including amendment of section, transmitted to OAL 4–15–2002 and filed 5–28–2002 (Register 2002, No. 22).

§ 1896.370. Compliance.

(a) In order to receive any payment under a Qualifying Contract, a contractor shall provide monthly reports to the contracting agency during the term of a Qualifying Contract. These reports shall include:

(1) The number of Covered Employees who received Employee Benefits and/or Cash Payments in the preceding month;

(2) The name of each Covered Employee who received Employee Benefits and/or Cash Payments in the preceding month;

(3) The number of hours each Covered Employee worked on the Qualifying Contract in the preceding month;

(4) The amount paid to each Covered Employee for Employee Benefits and/or Cash Payments in the preceding month; and

(5) The total monthly cost of Employee Benefits and/or Cash Payments in the preceding month, excluding any administrative or indirect costs.

(b) Qualifying Contracts and documents relating to implementing Government Code Section 19134 may be audited by the contracting state agency, the Department of General Services, and/or the Bureau of State Audits.

(c) Government Code Section 19134(e) provides that failure to provide Employee Benefits or Cash Payments to employees constitutes a "material breach" for any contract for personal services covered by that section. A breach can result in immediate contract termination by the state.

NOTE: Authority cited: Section 19134(f), Government Code. Reference: Section 19134(a), (c)(1), (c)(1), (d), (e) and (f), Government Code.

HISTORY

1. New section filed 12–29–2000 as an emergency; operative 1–1–2001 (Register 2000, No. 52). A Certificate of Compliance must be transmitted to OAL by

5–1–2001 or emergency language will be repealed by operation of law on the following day.

2. New section refiled 4–30–2001 as an emergency; operative 4–30–2001 (Register 2001, No. 18). A Certificate of Compliance must be transmitted to OAL by 8–28–2001 or emergency language will be repealed by operation of law on the following day.

3. New section refiled 8–16–2001 as an emergency; operative 8–16–2001 (Register 2001, No. 33). A Certificate of Compliance must be transmitted to OAL by 12–14–2001 or emergency language will be repealed by operation of law on the following day.

4. New section refiled 12–12–2001 as an emergency; operative 12–15–2001 (Register 2001, No. 50). A Certificate of Compliance must be transmitted to OAL by 4–15–2002 or emergency language will be repealed by operation of law on the following day.

5. Certificate of Compliance as to 12–12–2001 order, including amendment of section, transmitted to OAL 4–15–2002 and filed 5–28–2002 (Register 2002, No. 22).

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Title 2. Administration

Division 2. Financial Operations

Chapter 4. Office of the State Treasurer

Vol. 2

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Chapter 4. Office of the State Treasurer

(Originally Printed 10–29–77)

Subchapter 1. Conflict of Interest Code

§ 1897. General Provisions.

The Political Reform Act (Government Code Sections 81000, *et seq.*) requires state and local government agencies to adopt and promulgate conflict of interest codes. The Fair Political Practices Commission has adopted a regulation (2 California Code of Regulations Section 18730) which contains the terms of a standard conflict of interest code, which can be incorporated by reference in an agency's code, and which may be amended by the Fair Political Practices Commission to conform to amendments in the Political Reform Act after public notice and hearings. The terms of 2 California Code of Regulations Section 18730 and any amendments to it duly adopted by the Fair Political Practices Commission, along with the attached Appendix in which officials and employees are designated and disclosure categories are set forth, are hereby incorporated by reference and constitute the Conflict of Interest Code of the Office of the State Treasurer and the various boards, authorities, commissions and committees chaired by the State Treasurer.

Designated employees shall file statements of economic interests with the FPPC filing officer in the Office of the State Treasurer who will make the statements available for inspection and reproduction. With respect to officials who are determined to manage public investments within the meaning of Government Code Section 87200, the Office of the State Treasurer shall make and retain a copy and forward the original of these statements to the Fair Political Practices Commission.

NOTE: Authority cited: Section 87300, Government Code. Reference: Sections 87300 and 87302.

HISTORY

1. New chapter 4 (subchapter 1, articles 1–7, sections 1897–1897.17 and Appendix A) filed 10–27–77; effective thirtieth day thereafter. Approved by Fair Political Practices Commission 9–22–77 (Register 77, No. 44).
2. Repealer of subchapter 1 articles 1–7, sections 1897–1897.17 and Appendix A) and new subchapter 1 (section 1897 and Appendix) filed 2–26–81; effective thirtieth day thereafter. Approved by Fair Political Practices Commission 12–1–80 (Register 81, No. 9).
3. Editorial correction of Appendix (Register 81, No. 45).
4. Amendment filed 7–23–87; operative 8–22–87 (Register 87, No. 31).
5. Amendment of section and Appendix filed 9–13–93; operative 10–13–93. Submitted for printing only. Approved by Fair Political Practices Commission 8–6–93 (Register 93, No. 38).
6. Amendment of Appendix filed 4–4–96; operative 5–4–96. Approved by Fair Political Practices Commission 2–14–96 (Register 96, No. 14).
7. Editorial correction amending Appendix (Register 97, No. 6).
8. Amendment of section and Appendix filed 6–15–2000; operative 7–15–2000. Approved by Fair Political Practices Commission 5–1–2000 (Register 2000, No. 24).
9. Amendment of Appendix filed 2–11–2003; operative 3–13–2003. Approved by Fair Political Practices Commission 12–12–2002 (Register 2003, No. 7).
10. Amendment of Appendix filed 4–28–2003; operative 5–28–2003. Approved by Fair Political Practices Commission 12–12–2002 (Register 2003, No. 18).
11. Amendment of Appendix filed 1–20–2006; operative 2–19–2006. Approved by Fair Political Practices Commission 11–17–2005 (Register 2006, No. 3).

Appendix

Designated Employees	*Disclosure Category*
Office of the State Treasurer	
Deputy Treasurer	A
General Counsel	A
Staff Counsel (All Levels)	A
Director, Public Finance Division	A
Director, Cash Management Division	A
Consultants[1]	A
Director, Administration Division	A
Director, Securities Management Division	A
Assistant Director, Investment Division	A
Assistant Director, Public Finance Division	A
Assistant Director, Cash Management Division	A
Director of Legislative Affairs	A
Director of Communications	A
Director of Public Liaison	A
Training Officer	B
Treasury Program Manager (All Levels)	B
Staff Services Manager II	B
Staff Services Manager I (Administration Division)	B
Accounting Administrator	B
Associate Treasury Program Officer (Investment Division)	B
Director, Information Services Division	D
System Software Specialist II	D
System Software Speacialist III	D
Senior Program Analyst	D
California Alternative Energy and Advanced Transportation Financing Authority	
Authority Members	A
Executive Director	A
California Debt and Investment Advisory Commission	
Commission Members	A
Executive Director	A
Director of Policy Research	A
Staff Services Manager II (Supervisory)	C
California Debt Limit Allocation Committee	
Committee Members	A
Executive Director	A
Staff Services Manager II	A
California Educational Facilities Authority	
Authority Members	A
Executive Director	A
Deputy Executive Director	A
Treasury Program Manager II (Specialist)	C
California Health Facilities Financing Authority	
Authority Members	A
Executive Director	A
Deputy Executive Director	A
Treasury Program Manager II	C
California Industrial Development Financing Advisory Commission	
Commission Members	A
Executive Director	A
Deputy Executive Director	A
California Pollution Control Financing Authority	
Authority Members	A
Executive Director	A
Deputy Executive Director	A
Treasury Program Manager I (including Specialist)	C
California School Finance Authority	
Authority Members	A
Executive Director	A

Designated Employees	*Disclosure Category*
California Urban Waterfront Area Restoration Financing Authority	
Authority Members	A
Executive Director	A
Local Agency Investment Advisory Board	
Board Members	A
Executive Secretary	A
California Tax Credit Allocation Committee	
Committee Members	A
Executive Director	A
Staff Services Manager I (Allocation Unit and Program Operations)	C
Staff Services Manager II	C
Pooled Money Investment Board	
Board Members	A
Executive Secretary	A
ScholarShare Investment Board	
Board Members	A
Executive Director	A
Staff Services Manager I	C

Officials Who Manage Public Investments

The following individuals are NOT covered by the code because they must file under section 87200 and, therefore, are listed for informational purposes only:

(1) Chief Deputy Treasurer

(2) Deputy Treasurer (with oversight responsibility for the Investment Division)

(3) Director, Investment Division

An individual holding one of the above listed positions may contact the Fair Political Practices Commission for assistance or written advice regarding their filing obligations if they believe that their position has been categorized incorrectly. The Fair Political Practices Commission makes the final determination whether a position is covered by section 87200.

A. *A Designated Employee in Group A* shall report:

(1) All investments; interests in real property; business positions, including management positions; and income, including loans, gifts and travel payments.

B. *A Designated Employee in Group B* shall report:

(1) All investments; business positions, including management positions; and income, including loans, gifts, and travel payments; from or with any entity that is of the type to do business with the Office of the State Treasurer, the California Public Employees' Retirement System, the California State Teachers' Retirement System, the Pooled Money Investment Board, the Local Investment Advisory Board or any state bond financing authority or allocation board or commission.

C. *A Designated Employee in Group C* shall report:

(1) All interests in real property;

(2) All investments; business positions, including management positions; and income, including loans, gifts, and travel payments in any entity that is of the type to do business with the state bond financing authority or allocation board, committee or commission, by which he or she is employed; and

D. *A Designated Employee in Group D* shall report:

(1) All investments; business positions, including management positions; and income, including loans, gifts, and travel payments in any entity that is of the type to sell, rent, or lease information technology equipment, software, facilities, supplies or services, to the Office of the State Treasurer; and

[1] Consultants shall be included in the list of designated employees and shall disclose pursuant to disclosure category "A" in the code subject to the following limitation:

The Chief Deputy Treasurer may determine in writing that a particular consultant, although a "designated position," is hired to perform a range of duties that are limited in scope and thus is not required to fully comply with the disclosure requirements described in this section. Such determination shall include a description of the consultant's duties and, based upon that description, a statement of the extent of disclosure requirements. The Chief Deputy Treasurer's determination is a public record and shall be retained for public inspection in the same manner and location as this conflict of interest code.

Subchapter 2. Security for State Deposits

Article 1. General

§ 1898. Authority and Purpose.

This chapter is adopted to implement and interpret Sections 16522(g) and 16612(g) of the Government Code to describe the conditions to acceptance, by the State Treasurer, of promissory notes to secure state deposit.

NOTE: Authority cited: Sections 16522(g) and 16612(g), Government Code. Reference: Sections 16522(g) and 16612(g), Government Code.

HISTORY

1. New Subchapter 2 (Sections 1898–1898.10) filed 12–16–77; effective thirtieth day thereafter (Register 77, No. 51).

§ 1898.1. Definitions.

The following terms shall be used in the manner described below, when used in this Chapter.

(a) "Act" means the Bank Deposits Law, Chapter 4 of Part 2, Division 4, Title 2 of the Government Code or the Savings and Loan Association Deposits Law, Chapter 4.5 of Part 2, Division 4, Title 2 of the Government Code.

(b) "Treasurer" means the Treasurer, State of California.

(c) "Depository" means a Bank or Savings and Loan Association, located in this state, eligible under law to accept state deposits.

(d) "Qualified Trust Company" means the trust department of any state or national bank, in this state, or a trust company authorized to act as such in this state.

(e) "Promissory Note" means a promissory note secured by a first mortgage or first trust deed upon residential real property and improvements, used for residential purposes, located in California, and acceptable by the Treasurer as collateral to secure state deposits.

Article 2. Eligibility and Custody of Notes

§ 1898.2. Value of Collateral.

Promissory notes pledged as security for deposits shall be valued at the unpaid principal balance of the obligation. The value of the promissory notes shall at all times exceed by at least fifty percent the amount of the state deposit with the depository.

§ 1898.3. Eligible Collateral.

All promissory notes pledged to secure state deposits may be approved by the Treasurer. The Treasurer may accept as eligible, promissory notes secured by first mortgages and first trust deeds upon residential real property located in California, provided that:

(a) The loan to appraised value ratio is not in excess of 80 percent, unless such loan is federally insured or guaranteed;

(b) The loan has been outstanding at least six months prior to acceptance;

(c) No payment on the loan is more than thirty days past due prior to acceptance.

§ 1898.4. Assignment of Mortgages and Deeds of Trust.

Unless a power of attorney has been furnished pursuant to Section 1898.6, all pledged mortgages or deeds of trust shall be properly assigned

to the Treasurer, in such form as he may prescribe, to protect the security of the state deposits. No such assignment shall be recorded by the Treasurer until such time as the depository fails to pay all or any part of the deposit for which such mortgage or deed of trust stands as security.

§ 1898.5. Endorsement of Notes.

Unless a power of attorney has been furnished pursuant to Section 1898.6, each promissory note pledged to secure state deposits shall be endorsed to the Treasurer. The endorsement shall be signed by two individ-

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uals authorized by resolution of the bank or association to execute such instruments. The form of the endorsement should be as follows:

PAY TO THE ORDER OF THE TREASURER, STATE OF CALIFORNIA, WITHOUT RECOURSE.

By_____

By_____

§ 1898.6. Assignment and Endorsement by Power of Attorney.

In lieu of individually assigning each pledged mortgage or deed of trust and placing its unqualified endorsement on each promissory note, pursuant to Sections 1898.4 and 1898.5, a depository may furnish an appropriate resolution of its Board of Directors and an irrevocable power of attorney authorizing the Treasurer to assign the securities to the Treasurer. The resolution and power of attorney shall be in such form as the Treasurer may prescribe.

§ 1898.7. Reports.

At least quarterly, each depository shall furnish the Treasurer a report of the status of each promissory note pledged as collateral to secure state deposits. The report shall be in such form as the Treasurer may prescribe.

§ 1898.8. Release and Substitution of Promissory Notes.

(a) The Treasurer shall, within four business days of the request therefor, release to the depository all promissory notes, mortgages and/or deeds of trust requested by the depository to be released, so long as the aggregate value of the remaining promissory notes exceeds the minimum value prescribed by Section 1898.2.

(b) A depository may substitute promissory notes, upon the approval of the Treasurer as to the form of the note or notes proposed to be substituted and so long as the aggregate value of the promissory notes left to secure the state deposit (including the note or notes proposed to be substituted) exceeds the minimum value prescribed by Section 1898.2. The Treasurer shall approve or disapprove a substitution within four business days of the request therefor.

(c) A depository shall substitute for a promissory note:

(1) On which any payment is more than 90 days past due;

(2) Which is secured by a mortgage or deed of trust as to which there is a lien prior to the mortgage or deed of trust; or

(3) Which is secured by a mortgage or deed of trust as to which a notice of default has been recorded pursuant to Section 2924 of the Civil Code or an action has been commenced pursuant to Section 725a of the Code of Civil Procedure.

HISTORY

1. Amendment of subsection (c)(3) filed 1–13–78 as an emergency; designated effective 1–15–78. Certificate of Compliance included (Register 77, No. 51).

§ 1898.9. Return of Promissory Notes, Mortgages and Deeds of Trust.

Whenever a promissory note is released or substituted, such note, if individually endorsed to the Treasurer, and the mortgage or deed of trust securing such note, if individually assigned to the Treasurer, shall be endorsed without recourse or reassigned, as the case may be, prior to its return to the depository.

§ 1898.10. Custody of the Promissory Notes.

The Treasurer may require that the pledged promissory notes be maintained in the State Vault, or with consent of the depository, may authorize their deposit in a "qualified trust company" or the Federal Home Loan Bank of San Francisco.

Subchapter 3. Value of Promissory Notes Pledged to Secure Local Agency Deposits

Article 1. General

§ 1899. Authority and Purpose.

This chapter is adopted to implement, interpret or make specific Section 53651(m) of the Government Code to establish procedures for determining the value of promissory notes secured by first trust deeds, pledged to secure local agency deposits.

NOTE: Authority cited: Section 53651(m), Government Code. Reference: Article 2, Chapter 4, Part 1, Division 2, Title 5, Government Code.

HISTORY

1. New Subchapter 3 (Articles 1–2, Sections 1899–1899.2) filed 7–15–80; effective thirtieth day thereafter (Register 80, No. 29).

§ 1899.1. Definitions.

The following terms shall be used in the manner described below when used in this Subchapter.

(a) "Local agency" means county, city, city and county, or other public agency or corporation.

(b) "Eligible security (REN)" means "Eligible security (REN)" as defined in the Regulations of the Administrator of Local Agency Security.

NOTE: Authority cited: Section 53651(m), Government Code. Reference: Article 2, Chapter 4, Part 1, Division 2, Title 5, Government Code.

Article 2. Procedures for Determining Value

§ 1899.2. Value of Eligible Security (REN).

Eligible security (REN) pledged as collateral for local agency deposits shall be valued at the unpaid principal balance of the obligation.

NOTE: Authority cited: Section 53651(m), Government Code. Reference: Article 2, Chapter 4, Part 1, Division 2, Title 5, Government Code.

Subchapter 4. Target Business Enterprise Participation Goals for Professional Bond Services

Article 1. General

§ 1899.500. Purpose.

These rules implement Government Code sections 16850–16857 (which establish minority and women business enterprise participation annual goals) and Military and Veterans Code sections 999–999.8 (which establish disabled veteran business enterprise annual goals) for professional bond services contracts made by awarding departments which issue bonds by or on behalf of the State of California.

NOTE: Authority cited: Section 16853, Government Code; Section 999.5, Military and Veterans Code. Reference: Sections 16850–16857, Government Code; Sections 999–999.8, Military and Veterans Code.

HISTORY

1. New section filed 4–10–89 as an emergency; operative 4–10–89 (Register 89, No. 15). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 8–8–89.
2. Certificate of Compliance transmitted to OAL 8–8–89 and filed 9–7–89 (Register 89, No. 40).
3. Amendment filed 6–19–91; operative 6–19–91 (Register 91, No. 42).

§ 1899.501. Definitions.

The terms used in this subchapter shall have the meanings described in Government Code section 16851 and Military and Veterans Code sec-

tion 999. In addition, the following definitions apply to terms used in Government Code sections 16850–16853, Military and Veterans Code sections 999–999.5 and this subchapter:

(a) "Disabled Veteran" means a veteran of the military, naval, or air service of the United States with a service-connected disability (without regard to level of disability, as determined by the U.S. Department of Veterans Affairs or the U.S. Department of Defense and as evidenced by an official written document issued in the name of the veteran by either of those federal agencies) who is a resident of the State of California.

(b) "Management and Control" means exercising the power to make policy decisions.

(c) "Financing team" means the specific group of professional bond services underwriting firm(s) working on a bond sale consisting of the senior managing underwriter(s), co-managers, management group and selling syndicate.

(d) "Goal" means the annual percentage of total monies expended for professional bond services that, in accordance with statutory requirements, should be expended for TBE professional bond services.

(e) "Good Faith Effort" means, for purposes of complying with the Treasurer's participation goals for disabled veteran business enterprises ("DVBEs") that the contractor complied with either (I), (II) or (III) as described below:

(I) At least one DVBE firm participated on the financing team for the subject bond sale and the level of participation is in accordance with the Treasurer's DVBE participation goals; OR

(II) (A) Contact was made with the Treasurer's Office to identify certified DVBE firm(s); and

(B) At least one certified DVBE firm was invited to participate on the financing team; OR

(III) The financing team was formed under the specific direction of the Treasurer's Office.

(f) "Joint Venture" means a union of two or more professional bond services firms for the purpose of providing services for a particular debt financing of the State of California.

(g) "Professional bond services" means services directly participating in the issuance and sale of bonds including, but not limited to, financial advisors, bond counsel, underwriters, underwriter's counsel, financial printers, feasibility consultants, accountants and auditors. "Professional bond services" shall not include ancillary services such as trustee, paying agent, depository, rating agency, credit enhancement provider, investment or escrow services for proceeds of the sale of bonds.

(h) "Subcontract" means an agreement or arrangement between a contractor and any person (in which the parties do not stand in the relationship of employer and employee) under which any portion of the contractor's obligation under one or more contracts is performed, undertaken or assumed.

(i) "TBE" means a target business enterprise which collectively shall include minority-owned business enterprises (MBEs) as defined in Government Code section 16851(g), women-owned business enterprises (WBEs) as defined in Government Code section 16851(i) and disabled veteran business enterprises (DVBEs) as defined in Military and Veterans Code section 999(g).

(j) "Treasurer" means the Treasurer of the State of California.

(k) "Underwriter's discount" means the difference between the price the underwriter pays the issuer for the bonds and the price at which the underwriter sells the bonds to investors. For program reporting purposes, the following terms shall have the specified definitions:

(1) Management Fee – a fee paid to the managing and co-managing underwriters for handling the affairs of the underwriting syndicate;

(2) Takedown – the income (including income derived from designated and group sales) derived by the selling broker or dealer from the sale of the bonds excluding identified concessions passed through the syndicate or selling group to an investor;

(3) Risk – the amount of compensation for risks incurred by the underwriter in underwriting the bond issue, relating to the difficulty of marketing the issue, bond market conditions, and the amount of bonds remaining to be sold after the execution of the bond purchase agreement.

(4) Expenses – the amount of expenses incurred by the underwriter(s) for "professional bond services."

(*l*) "Year" means calendar year.

NOTE: Authority cited: Section 16853, Government Code; Section 999.5, Military and Veterans Code. Reference: Sections 16850–16853, Government Code; Sections 999–999.5, Military and Veterans Code.

HISTORY

1. New section filed 4–10–89 as an emergency; operative 4–10–89 (Register 89, No. 15). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 8–8–89.
2. Certificate of Compliance transmitted to OAL 8–8–89 and filed 9–7–89 (Register 89, No. 40).
3. Amendment filed 6–19–91; operative 6–19–91 (Register 91, No. 42).

Article 2. Certification

§ 1899.510. TBE List.

(a) The Treasurer shall compile a list of TBEs that meet the requirements of Government Code section 16851(g) and (i) and the requirements of Military and Veterans Code section 999(g). The list shall be organized by the types of professional bond services (e.g., underwriters, bond counsels, financial advisors). The list shall be known as the "TBE List."

(b) To be certified as an "Underwriter" on the TBE List, the firm must demonstrate, to the satisfaction of the Treasurer, that the firm:

(1) is licensed as a "broker/dealer" by the federal Securities and Exchange Commission;

(2) is licensed as a "broker/dealer" by all states in which the firm effects transactions in securities and which require such licensing and

(3) is a member of the National Association of Securities Dealers (NASD).

(c) Wholly-owned corporate subsidiaries of corporations shall be eligible for certification as TBEs only if the parent corporation is certified as a TBE. Subsidiaries of certified TBE corporations that are not wholly-owned by the certified TBE corporation shall be ineligible for certification on the TBE List.

(d) Only annual monies expended for professional bond services provided by TBEs included on the TBE List shall be counted for purposes of the participation goals established by section 16850 of the Government Code, section 999.1 of the Military and Veterans Code and section 1899.522 of these regulations.

(e) The TBE List shall also be used as the list of TBEs entitled to notice under Government Code section 16852(a) or Military and Veterans Code section 999.3(a).

NOTE: Authority cited: Section 16853, Government Code; Sections 999.3 and 999.5, Military and Veterans Code. Reference: Sections 16850–16853, Government Code; Sections 999–999.5, Military and Veterans Code.

HISTORY

1. New section filed 4–10–89 as an emergency; operative 4–10–89 (Register 89, No. 15). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 8–8–89.
2. Certificate of Compliance transmitted to OAL 8–8–89 and filed 9–7–89 (Register 89, No. 40).
3. Amendment filed 6–19–91; operative 6–19–91 (Register 91, No. 42).

§ 1899.511. Availability of Data.

The Treasurer's Office shall make its TBE List available to other awarding departments.

NOTE: Authority cited: Section 16853, Government Code; Section 999.5, Military and Veterans Code. Reference: Sections 16850–16853, Government Code; Sections 999–999.5, Military and Veterans Code.

HISTORY

1. New section filed 4–10–89 as an emergency; operative 4–10–89 (Register 89, No. 15). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 8–8–89.
2. Certificate of Compliance transmitted to OAL 8–8–89 and filed 9–7–89 (Register 89, No. 40).
3. Amendment filed 6–19–91; operative 6–19–91 (Register 91, No. 42).

§ 1899.512. Application for Certification on TBE List.

(a) To be eligible for inclusion on the Treasurer's TBE List, a business enterprise must have a completed application (See section 1899.513(a)) on file with the Treasurer, meet all applicable requirements under this subchapter, and either Government Code section 16851 or Military and Veterans Code section 999. All business enterprises that meet the requirements shall be certified on the TBE List.

(b) Every certified TBE shall be subject to verification of status at any time the Treasurer's Office deems appropriate. Failure of a TBE to provide information within 30 days of a written request by the Treasurer's Office shall be grounds for summary removal from the TBE List.

(1) Veterans who certify disabled veteran status must provide an award letter from the United States Department of Veterans Affairs or Department of Defense which would indicate the existence of a service-connected disability at the time of application for disabled veteran business enterprise status.

(c) A certified TBE shall, within 30 days of the effective date of such changes, give written notice to the Treasurer of any material changes in the management and control or ownership of the certified business enterprise. Failure to notify the Treasurer within this specified period of a material change in management and control or ownership that results in the TBE's no longer meeting the requirements for certification, shall constitute grounds for removal from the TBE List.

NOTE: Authority cited: Section 16853, Government Code; Section 999.5, Military and Veterans Code. Reference: Sections 16850–16853, Government Code; Sections 999–999.5, Military and Veterans Code.

HISTORY

1. New section filed 4–10–89 as an emergency; operative 4–10–89 (Register 89, No. 15). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 8–8–89.
2. Certificate of Compliance transmitted to OAL 8–8–89 and filed 9–7–89 (Register 89, No. 40).
3. Amendment filed 6–19–91; operative 6–19–91 (Register 91, No. 42).

§ 1899.513. TBE List Applications and Certification.

(a) Applications for certification on the TBE List shall be in the form provided in Appendix A.

(b) In assessing the suitability of a TBE for professional bond services contracts, the Treasurer may require additional information such as experience resumes, financial statements, insurance requirements, and bonding limits.

(c) The filing of a completed application and inclusion on the TBE List shall not be construed as an endorsement of a business enterprise's ability to perform or guarantee the business enterprise a contract in connection with any bond sale.

(d) The TBE Applications for Certification and related attachments and correspondence are public records subject to the disclosure requirements of the Public Records Act (Government Code section 6250 et seq.).

NOTE: Authority cited: Sections 16853 and 16857, Government Code; Section 999.5, Military and Veterans Code. Reference: Sections 16850–16853 and 16857, Government Code; Sections 999–999.5, Military and Veterans Code.

HISTORY

1. New section filed 4–10–89 as an emergency; operative 4–10–89 (Register 89, No. 15). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 8–8–89.
2. Certificate of Compliance transmitted to OAL 8–8–89 and filed 9–7–89 (Register 89, No. 40).
3. Amendment filed 6–19–91; operative 6–19–91 (Register 91, No. 42).

§ 1899.514. Application Processing.

Every applicant for certification as a TBE shall be notified in writing of any deficiencies in the application within 60 days of the receipt of such application by the Treasurer. If requested by the Treasurer, an applicant shall submit additional written information within 30 days of the date of the Treasurer's request. If the additional information is not received by the Treasurer within the 30–day period, the Treasurer is authorized to immediately deny that applicant's application for certification. On receipt of a completed application, the Treasurer shall notify the applicant in writing of the Treasurer's determination within 60 days of receipt of the completed application.

NOTE: Authority cited: Sections 15376 and 16853, Government Code; Section 999.5, Military and Veterans Code. Reference: Sections 15374–15378, 16850–16853, Government Code; Sections 999–999.5, Military and Veterans Code.

HISTORY

1. New section filed 4–10–89 as an emergency; operative 4–1–89 (Register 89, No. 15).
2. Certificate of Compliance transmitted to OAL 8–8–89 and filed 9–7–89 (Register 89, No. 40).
3. Amendment filed 6–19–91; operative 6–19–91 (Register 91, No. 42).

§ 1899.515. Appeal of Determination.

(a) All determinations of noneligibility for certification of TBE status made by the Treasurer shall become final unless the determination is appealed in a timely manner. Any business enterprise which believes that the determination has resulted in its being wrongly denied certification as a TBE by the Treasurer may file an appeal in writing, signed and dated, with the Treasurer. The appeal must be filed no later than 20 days after the date of notice of decertification or denial of certification. The Treasurer may, upon written request which specifies the reasons for such request, extend the time for filing or waive the time limit in the interest of justice, specifying in writing the reasons for doing so.

(b) Following receipt of an appeal, where the appeal is based upon denial of an application for certification the Treasurer shall determine whether the appeal is to be resolved by the submittal of written documents or by public hearing, or both. When the appeal is based upon the revocation of a currently valid certification, the appeal shall be resolved by public hearing. In the event a public hearing is to be held, the Treasurer shall set a date, time and place for the hearing and shall notify the applicant not less than 20 days in advance of the hearing. The Treasurer may, on the request of the applicant with a showing of good cause or on the Treasurer's own motion, giving advance notice to the applicant, change the date of, postpone or continue the hearing. If the appeal is to be determined through the submittal of written documents, notice shall be sent to the applicant and the applicant may submit written materials in support of its position in accordance with the deadline established by the hearing officer. The determination that the appeal shall be resolved through the submittal of written documents shall be based on the hearing officer's finding that oral or additional testimony would be unnecessary for a full understanding of the issues.

(c) Any written submission to the Treasurer in connection with an appeal under this section shall, at a minimum, include an original and two copies.

(d) At any time the Treasurer finds that an appeal is clearly insufficient on its face, entirely without merit, or outside of the jurisdiction of the Treasurer, the Treasurer may summarily dismiss the appeal without hearing.

(e) Recertification. A person or firm whose application for certification is denied, and any person or firm which is decertified by formal determination of the Treasurer may re–apply for certification (or re–certification). Applications for re–certification must include a written description of the material changes instituted by the applicant warranting reconsideration by the Treasurer.

NOTE: Authority cited: Section 16853, Government Code; Section 999.5, Military and Veterans Code. Reference: Sections 16850–16853, Government Code; Sections 999–999.5, Military and Veterans Code.

HISTORY

1. New section filed 4–10–89 as an emergency; operative 4–10–89 (Register 89, No. 15). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 8–8–89.
2. Certificate of Compliance transmitted to OAL 8–8–89 and filed 9–7–89 (Register 89, No. 40).
3. Amendment filed 6–19–91; operative 6–19–91 (Register 91, No. 42).

§ 1899.516. Request for Review.

The Treasurer's determination to include a business enterprise on the TBE List relies on an applicant's certification that the applicant meets the statutory requirements for a minority business enterprise, women busi-

ness enterprise, or disabled veteran business enterprise. Any person may request in writing that the Treasurer investigate the basis for the inclusion of a business enterprise on the TBE List. The request for review shall:

(1) state the reason(s) for alleging a certified TBE or TBE certification applicant does not meet the statutory requirements and

(2) include supporting evidence that may assist the Treasurer in the investigation of the matter.

NOTE: Authority cited: Section 16853, Government Code; Section 999.5, Military and Veterans Code. Reference: Sections 16850–16853, Government Code; Sections 999–999.5, Military and Veterans Code.

HISTORY

1. New section filed 4–10–89 as an emergency; operative 4–10–89 (Register 89, No. 15). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 8–8–89.
2. Certificate of Compliance transmitted to OAL 8–8–89 and filed 9–7–89 (Register 89, No. 40).
3. Amendment filed 6–19–91; operative 6–19–91 (Register 91, No. 42).

Article 3. Competitive Sales

§ 1899.520. Notices.

If bonds are to be sold by competitive bid, the notice of sale shall:

(a) Be delivered to all underwriters on the Treasurer's TBE List;

(b) Contain the following statement:

"Firms owned by minorities, women, and disabled veterans are encouraged to respond to this invitation for bid.

The Treasurer has adopted regulations and participation goals for professional bond services firms owned by minorities, women and disabled veterans. These participation goals are set forth in title 2 of the California Code of Regulations in section 1899.522. All bidders must certify awareness of these regulations and goals and that a good faith effort was made to comply with the Treasurer's DVBE participation goals. Successful bidders will be required to submit reports to the Treasurer concerning TBE outreach efforts and professional bond service participation in transactions related to the offer and sale of the bonds that are the subject of this notice of sale."

NOTE: Authority cited: Section 16853, Government Code; Sections 999.4 and 999.5, Military and Veterans Code. Reference: Section 16852, Government Code; Sections 999–999.5, Military and Veterans Code.

HISTORY

1. New section filed 4–10–89 as an emergency; operative 4–10–89 (Register 89, No. 15). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 8–8–89.
2. Certificate of Compliance transmitted to OAL 8–8–89 and filed 9–7–89 (Register 89, No. 40).
3. Amendment filed 6–19–91; operative 6–19–91 (Register 91, No. 42).

§ 1899.521. Bids.

(a) The form for submitting bids shall contain the following certification which shall be executed by the bidder:

"TBE PARTICIPATION AND DVBE GOOD FAITH EFFORTS. Bidder certifies to all of the following:

(1) Bidder is aware of the Treasurer's regulations and participation goals for target business enterprises offering professional bond services.

(2) Bidder is aware that existing law requires the bidder to demonstrate a good faith effort (as defined in section 1899.501 of title 2 of the California Code of Regulations) toward the Treasurer's participation goals for disabled veteran–owned firms.

(3) Bidder is aware and acknowledges that if the Treasurer concludes that the bidder has not demonstrated a good faith effort, the Treasurer is authorized under existing laws to award the contract to the next lowest responsive and responsible bidder."

(b) The senior managing underwriter may make the certification required by subdivision (a) on behalf of the syndicate or selling group.

NOTE: Authority cited: Section 16853, Government Code; Sections 999.4 and 999.5, Military and Veterans Code. Reference: Section 16852, Government Code; Sections 999–999.5, Military and Veterans Code.

HISTORY

1. New section filed 4–10–89 as an emergency; operative 4–10–89 (Register 89, No. 15). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 8–8–89.
2. Certificate of Compliance transmitted to OAL 8–8–89 and filed 9–7–89 (Register 89, No. 40).
3. Amendment filed 6–19–91; operative 6–19–91 (Register 91, No. 42).

§ 1899.522. Goals for Competitive Contracts.

The Treasurer's annual goals for TBE participation in competitive contracts for professional bond services shall be 15 percent for minority business enterprises, 5 percent for women business enterprises, and 3 percent for disabled veteran business enterprises. These goals need not be met in every competitive bond transaction but will be pursued on an aggregate annual basis considering all competitive bond transactions during a year. These goals will also be described in each notice of sale for bonds to be sold by competitive bid.

NOTE: Authority cited: Section 16853, Government Code; Section 999.5, Military and Veterans Code. Reference: Section 16850, Government Code; Sections 999–999.5, Military and Veterans Code.

HISTORY

1. New section filed 4–10–89 as an emergency; operative 4–10–89 (Register 89, No. 15). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 8–8–89.
2. Certificate of Compliance transmitted to OAL 8–8–89 and filed 9–7–89 (Register 89, No. 40).
3. Amendment filed 6–19–91; operative 6–19–91 (Register 91, No. 42).

§ 1899.523. Reports.

The Senior Managing Underwriter in a competitive sale of bonds shall submit a written report regarding distribution of the underwriter's discount to the Treasurer within 10 days of closing a transaction where the senior managing underwriter's services were used. The report shall be submitted in the form set forth in Appendix B.

NOTE: Authority cited: Section 16853, Government Code; Section 999.5, Military and Veterans Code. Reference: Sections 16850 and 16853, Government Code; Sections 999–999.5, Military and Veterans Code.

HISTORY

1. New section filed 6–19–91; operative 6–19–91 (Register 91, No. 42).

Article 4. Negotiated Sales

§ 1899.530. Goals.

The statutory goals for professional bond services in connection with bonds sold in negotiated transactions need not be met in every individual contract for services but will be pursued on an aggregate annual basis considering all contracts for professional bond services during a year. Thus, during the course of a year, there may be contracts without TBE participation and contracts with TBEs as prime contractor or TBE participation substantially higher than the statutory goal. Contractors in negotiated transactions shall be required to demonstrate that a good faith effort (as defined in section 1899.501 of title 2 of the California Code of Regulations) was made to comply with the Treasurer's participation goals for DVBEs. This requirement shall be satisfied by including a written statement in the report submitted by the senior managing underwriter in accordance with section 1899.532, below.

NOTE: Authority cited: Section 16853, Government Code; Section 999.5, Military and Veterans Code. Reference: Section 16850, Government Code; Sections 999–999.5, Military and Veterans Code.

HISTORY

1. New section filed 4–10–89 as an emergency; operative 4–10–89 (Register 89, No. 15). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 8–8–89.
2. Certificate of Compliance transmitted to OAL 8–8–89 and filed 9–7–89 (Register 89, No. 40).
3. Amendment filed 6–19–91; operative 6–19–91 (Register 91, No. 42).

§ 1899.531. TBE Qualifications.

TBEs shall be considered for only those contracts or participation in contracts commensurate with their experience, capital, and compliance with applicable licensing requirements.

NOTE: Authority cited: Section 16853, Government Code; Section 999.5, Military and Veterans Code. Reference: Section 16850, Government Code; Sections 999–999.5, Military and Veterans Code.

HISTORY

1. New section filed 4–10–89 as an emergency; operative 4–10–89 (Register 89, No. 15). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 8–8–89.
2. Certificate of Compliance transmitted to OAL 8–8–89 and filed 9–7–89 (Register 89, No. 40).
3. Amendment filed 6–19–91; operative 6–19–91 (Register 91, No. 42).

Appendix A

STATE OF CALIFORNIA
OFFICE OF THE STATE TREASURER
APPLICATION FOR
TARGET BUSINESS ENTERPRISE CERTIFICATION

This is the official application form for certification as a "Target Business Enterprise" with the Office of the State Treasurer of the State of California. Under the regulations adopted by the State Treasurer, a "Target Business Enterprise" includes all minority business enterprises (MBEs), women-owned business enterprises (WBEs) and disabled veteran business enterprises (DVBEs).

Instructions: Please review the applicable statutes and regulations. Answer all questions carefully. If a question does not apply to your firm or circumstances, please enter "NA."

1. Name of Firm _____

   Home Office Address _____
   No. Street City State Zip

   Telephone Number(s) _____
   (Area Code) and No. Telefax No.

   California address (if different) _____
   Number Street

   _____
   City Zip

   California Telephone Number(s) _____
   Area Code and No. Telefax No.

2. Name of Firm President/ Chief Executive Officer/ Managing Partner.

   _____
   First Name M.I. Last Name Title

3. Name and title of person completing this application.

   _____
   First Name M.I. Last Name Title

4. This firm is applying for certified status as (check all that apply):

   _____ Minority-owned Business (MBE).

   _____ Women-owned Business (WBE).

   _____ Disabled Veteran-owned Business (DVBE).

5. For MBE Applicants Only.

(a) Please indicate the ethnicity of the firm's Principal Owner(s). (check all that apply):

___ American Indian/ Native American

___ Filipino

___ Asian

___ Hispanic

___ Black/ African-American

___ Other (specify)_____

(b) Please indicate the percentage of the firm's stock or partnership interest owned by each of the ethnic groups identified as Principal Owners in Question 5 (a), above:

___ % American Indian/ Native American

___ % Black/ African American

___ % Hispanic

___ % Asian

___ % Filipino

___ % Other (specify)_____

(c) Is the management and control of the daily operations of the firm in accordance with the division of ownership/partnership interests as specified in (b)?

___ Yes

___ No (Please explain).

_____

_____

6. For WBE Applicants Only.

(a) Please indicate the percentage of the firm's stock or partnership interest owned by the following:

___ % - Female Ownership/Partnership.

___ % - Male Ownership/Partnership.

(b) Is the management and control of the daily operations of the firm in accordance with the division of ownership/partnership interests as specified in (a) ?

___ Yes

___ No (Please explain).

_____

_____

7. For DVBE Applicants Only

(a) Are the owner(s) of this firm resident(s) of the State of California?

___ Yes ___ No

(b) Do the owner(s) of this firm have a disability rating as issued by either the U.S. Department of Veterans Affairs or the Department of Defense?

___ Yes** ___ No

(c) Please indicate the percentage of the firm's stock or partnership interest owned by the disabled veteran owner(s).

___ % Ownership/Partnership

(d) Are the management and control of the daily operations of the firm in accordance with the division of ownership/partnership interests as indicated in Question 7 (c), above?

___ Yes

___ No (please explain).

_____

_____

8. Identify the specific type(s) of Professional Bond Services that the firm provides (check all that apply):

___ Underwriting ___ Bond Counsel

___ Financial Advisor ___ Underwriter's Counsel

___ Investment Advisor ___ Other (please provide specific description below)

_____

** If yes, please attach award letter from the federal agency indicating the existence of a service-connected disability at the time this application is submitted to the Office of the State Treasurer.

9. If licensing or accreditation is required to conduct the firm's business, please complete this item:

Type of License/ Accreditation	Issued By	Date Issued	Expiration Date	Holder/Registrant of License

10. Certification Eligibility.

(a) If your firm seeks certification as a "minority business enterprise," by submitting this application you certify that your firm qualifies under the following statutory definition:

"Minority business enterprise" means a business concern that meets **all** of the following requirements:

(1) A sole proprietorship owned by a minority or a firm or partnership, 51 percent of the stock or partnership interests of which are owned by one or more minorities.

(2) Managed by, and the daily business operations are controlled by, one or more minorities.

(3) A sole proprietorship, corporation, or partnership with its home office located in the United States, which is not a branch or subsidiary of a foreign corporation, firm, or other business.

(b) If your firm seeks certification as a "women business enterprise," by submitting this application you certify that your firm qualifies under the following statutory definition:

"Women business enterprise" means a business concern that is **all** of the following:

(1) A sole proprietorship owned by a woman or a firm or partnership, 51 percent of the stock or partnership interests of which are owned by one or more women.

(2) Managed by, and the daily business operations are controlled by, one or more women.

(3) A sole proprietorship, corporation or partnership with its home office located in the United States, which is not a branch or subsidiary of a foreign corporation, firm, or other business.

(c) If your firm seeks certification as a "disabled veteran business enterprise," by submitting this application you certify that your firm qualifies under the following statutory definition:

"Disabled veteran business enterprise" means a business concern that meets **all** of the following requirements:

(1) A sole proprietorship owned by a disabled veteran, or a firm or partnership, 100 percent of the stock or partnership interests of which are owned by one or more disabled veterans.

(2) Managed by, and the daily business operations are controlled by, one or more disabled veterans.

(3) A sole proprietorship, corporation, or partnership with its home office located in the United States, which is not a branch or subsidiary of a foreign corporation, firm, or other business.

11. Fraudulent Representations, Acknowledgements and Verification.

(a) In accordance with Section 16857 of the Government Code, a person or firm that willfully and knowingly makes any false statements or misrepresentations in an Application for certification as a **Minority Business Enterprise or Women Business Enterprise** shall be liable for:

(1) Civil penalty not to exceed $5,000 (for the first violation) and up to $20,000 for each additional or subsequent violation; and

(2) Suspension from bidding on, or participating as either a contractor or subcontractor in, any professional bond services contract awarded by the state for a period of not less than 30 days nor more than one year. For an additional or subsequent violation of this section, the period of suspension shall be extended for a period of three years. A person or firm that fails to satisfy any of the penalties imposed for violations of this section shall be prohibited from further contracting with the state until all penalties are satisfied.

THIS SUBSECTION DOES NOT APPLY TO APPLICANTS OR APPLICATIONS FILED WITH THE TREASURER FOR CERTIFICATION AS A DISABLED VETERAN BUSINESS ENTERPRISE. HOWEVER, IN ADDITION TO ANY CRIMINAL PENALTIES PROVIDED FOR BY LAW, THE MAKING OF ANY FALSE STATEMENTS OR MISREPRESENTATIONS IN AN APPLICATION FOR CERTIFICATION AS A DISABLED VETERAN BUSINESS ENTERPRISE WILL BE GROUNDS FOR TERMINATING ANY CONTRACTS AWARDED TO THAT APPLICANT BY THE TREASURER AND MAY RESULT IN THAT APPLICANT'S DISQUALIFICATION FROM PARTICIPATING IN FUTURE CONTRACTS AWARDED BY THE TREASURER.

(b) Applicant agrees to submit additional information upon request of the Treasurer and acknowledges that the Treasurer may deny the application for certification from an Applicant as a Target Business Enterprise (MBE, WBE, or DVBE) if the additional information is not submitted in writing within 30 days after it is requested by the Treasurer.

(c) The Applicant consents to inspection of its books, records and other relevant business documents and to interviews of its principals and employees by the Treasurer or the Treasurer's representatives for the purpose of determining whether the Applicant is, or continues to be, an eligible TBE. The Applicant acknowledges that its application may be immediately denied or certification revoked if such inspection or interviews are refused or if the Treasurer determines, as a result of the inspection or interviews, that the Applicant does not qualify as a TBE.

(d) The Applicant agrees to provide to the Treasurer (with or without prior request of the Treasurer) information regarding any change in ownership or management and control of the Applicant's business within 30 days of the effective date of such change.

AFFIDAVIT

The Applicant has caused this application to be signed on its behalf by the undersigned, thereunto duly authorized.

_____
Applicant

By _____

_____
Title

I certify (or declare) under penalty of perjury under the laws of the State of California that I have read this application and the exhibits thereto and know the contents thereof, and that the statements therein are true and correct.

Executed at _____, on _____, 19__.
(Place) (Date)

_____
(Signature)

NOTARY

On this___day of_____19__, before me appeared

_____ to me personally known, who being sworn,
(Name)

did execute the foregoing affidavit, and did state that he/she was properly

authorized by _____ to execute
(Name of Firm)

the affidavit and did so as his/her free act and deed.

SEAL

NOTARY PUBLIC_____

COMMISSION EXPIRES_____

Mail completed application to:

TBE Program
Trust Services Division
State Treasurer's Office
P.O. Box 942809
Sacramento, CA 94209-0001

Appendix B

STATE OF CALIFORNIA
OFFICE OF THE STATE TREASURER
TARGET BUSINESS ENTERPRISE PARTICIPATION
IN PROFESSIONAL BOND SERVICES
REPORT

COMPETITIVE SALES

(To be completed by Senior Manager)

In accordance with the Notice of Sale, this report is to be completed and returned to the State Treasurer's Office, Trust Services Division; 915 Capitol Mall, Room 107; Sacramento, CA 95814 **within 10 days** of closing of the issue referenced below.

Issuer _____

Issue Description _____

Series _____ Amount $_____ Date Sold _____

Senior Manager _____

Contact Person _____ Phone _____

A. GROSS SPREAD

1. TAKEDOWN

Gross Takedown	$_____	
Pricing Adjustment	_____	
Less: Allowable Concessions	_____	
Net Takedown		$_____

2. SYNDICATE PROFIT & LOSS

Net Proceeds from Sale of Bonds	$_____	
Cost of Bonds Sold	_____	
Gross Profit	$_____	
Less Expenses:	_____	
Net Profit		$_____

3. SUMMARY OF GROSS SPREAD

Gross Takedown $_____

Expenses _____

Syndicate Profit & Loss _____

Total Gross Spread $_____

4. RECONCILIATION OF GROSS SPREAD TO RE-OFFERING PRICE

Re-offering Price $_____

Bid Price _____

Difference between bid price & re-offering price _____

Difference (Explain) $_____

_____

_____

B. TBE PARTICIPATION

1. TBE firms' Takedown and Share of Syndicate Profit & Loss.

Name of TBE Firm	Net Takedown ($)	%	Share of Syndicate P & L ($)	(%)

2. Expenses incurred by the underwriter(s) and paid to TBE firms for "Professional Bond Services" (PBS). [Under the Treasurer's regulations, "Professional Bond Services" means services directly participating in the sale of bonds including, but not limited to, financial advisors, underwriters, bond counsel, underwriter's counsel, financial printers, feasibility consultants, accountants and auditors.]

Name of TBE Firm	Services Provided	Total Fees Paid ($)	Percentage of PBS Fees Paid to TBE (%)

Appendix C

STATE OF CALIFORNIA
OFFICE OF THE STATE TREASURER
TARGET BUSINESS ENTERPRISE
IN PROFESSIONAL BOND SERVICES REPORT

NEGOTIATED SALES

(To be completed by Senior Manager)

In accordance with the Purchase Agreement, this report is to be completed and returned to the State Treasurer's Office, Trust Services Division; 915 Capitol Mall, Room 107; Sacramento, CA 95814 within 10 days of closing of the below mentioned issue.

Issuer _____

Issue Description _____

Series _____ Amount $ _____ Date Sold _____

Senior Manager _____

Contact Person _____ Phone _____

1. MANAGEMENT FEE Total: $ _____

Lead Manager's share of management fee $ _____ % of Total _____%

Co–Managers' share of management fees:

Co–Manager(s)	TBE* Firm(s) Yes/No	Management Fee	% of Total
_____	____	$_____	____%
_____	____	$_____	____%
_____	____	$_____	____%
_____	____	$_____	____%
_____	____	$_____	____%
_____	____	$_____	____%
_____	____	$_____	____%

2. TAKEDOWN

a: Gross Takedown $ _____

Less Identified concessions $ _____

Net takedown $ _____

b: Takedown by Manager/Co–Managers/Syndicate member/Selling group member:

*TBE —means target business enterprise which collectively includes minority business enterprises, or women business enterprises as both of these are defined in Section 16851 of the Government Code, and disabled veteran business enterprise as defined in Section 999 of the Military and Veterans Code.

Firm	TBE Firm Yes/No	Takedown (Excluding Identified Concessions)	% of Total
_____	____	$_____	____%
_____	____	$_____	____%
_____	____	$_____	____%
_____	____	$_____	____%
_____	____	$_____	____%
_____	____	$_____	____%
_____	____	$_____	____%

If necessary, continue in same format on an attachment labeled "Attachment A."

3. RISK Total: $ _____

Lead Manager's risk: $ _____ % of Total _____ %

Co–Managers/Syndicate members risk:

Name	TBE Firm Yes/No	Amount	% of Total
_____	____	$_____	____%
_____	____	$_____	____%
_____	____	$_____	____%
_____	____	$_____	____%
_____	____	$_____	____%
_____	____	$_____	____%
_____	____	$_____	____%

If necessary, continue in same format on an attachment labeled "Attachment B."

4. EXPENSES Total: $ _____

Professional Bond Services (PBS) Expenses	Firm	TBE Firm Yes/No	Compensation
Underwriter's Counsel	_____	_____	$ _____
Underwriter's Co–Counsel	_____	_____	$_____
Printing—OS/POS	_____	_____	$_____
Printing—Bonds	_____	_____	$_____

Other PBS Expenses:
(Identify)

_____	_____	_____	$_____
_____	_____	_____	$_____
_____	_____	_____	$_____
_____	_____	_____	$_____

All other Expensers
(non–PBS)

_____	_____	_____	$_____
_____	_____	_____	$_____
_____	_____	_____	$_____
_____	_____	_____	$_____

5. GROSS SPREAD Total: $ _____

6. DVBE GOOD FAITH EFFORTS

The Senior Managing Underwriter on this bond sale took the actions indicated below to demonstrate a good faith effort to include DVBE firm(s) in this bond sale (indicate by marking with an "X").

_____ At least one DVBE firm was included in the financing team for this bond sale and the DVBE participation was in accordance with the Treasurer's DVBE participation goals.

_____ Contact was made with the Treasurer's Office to identify Certified DVBEs;

_____ At least one certified DVBE firm was invited to participate on the financing team for this bond sale;

_____ The financing team was formed under the specific direction of the Treasurer's Office.

NOTE: Authority cited: Section 16853, Government Code. Reference: Section 16853, Government Code.

HISTORY

1. New section filed 4–10–89 as an emergency; operative 4–10–89 (Register 89, No. 15). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 8–8–89.
2. Certificate of Compliance transmitted to OAL 8–8–89 and filed 9–7–89 (Register 89, No. 40).

§ 1899.532. Reports.

The Senior Managing Underwriter in a negotiated sale of bonds shall submit a written report to the Treasurer, within 10 days of closing a transaction where the senior managing underwriter's services were used, regarding

(1) distribution of the underwriter's discount; and

(2) the good faith efforts made to include a DVBE in the financing team for the bond sale. The report shall be submitted in the form set forth in Appendix C.

NOTE: Authority cited: Section 16853, Government Code; Section 999.5, Military and Veterans Code. Reference: Sections 16850 and 16853, Government Code; Sections 999–999.5, Military and Veterans Code.

HISTORY

1. New section filed 6–19–91; operative 6–19–91 (Register 91, No. 42).

Article 5. Reports

§ 1899.540. Reports.

NOTE: Authority cited: Section 16853, Government Code. Reference: Section 16853, Government Code.

HISTORY

1. New section filed 4–10–89 as an emergency; operative 4–10–89 (Register 89, No. 15). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 8–8–89.
2. Certificate of Compliance transmitted to OAL 8–8–89 and filed 9–7–89 (Register 89, No. 40).
3. Repeal of article 5 and section filed 6–19–91; operative 6–19–91 (Register 91, No. 42).